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JOHN C. CALHOUN

A Disquisition on Government

JOHN C. CALHOUN

A DISQUISITION ON GOVERNMENT

AND SELECTIONS FROM THE *DISCOURSE*

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CALHOUN'S WRITINGS

INTRODUCTION

John Caldwell Calhoun in April, 1845, informed a friend that he had commenced "an enquiry into the elements of political science, preliminary to a treatise on the Constitution of the U. States; but I know not whether I shall ever have time to finish it." Calhoun lived to complete the preliminary enquiry, *A Disquisition on Government*, and the treatise, *A Discourse on the Constitution and Government of the United States*, but he did not live to see either work in print.

The chief problem to which Calhoun gave his attention in both the *Disquisition* and the *Discourse* was how best to safeguard the interests and way of life of a minority against the will of democratic majorities.

The *Disquisition*, particularly, reveals Calhoun as a courageous and original thinker, as a keen observer and student of history, and possessed of insights beyond the ken of most of his contemporaries. Leaving aside the issue of slavery, Calhoun's thought displays a universality which will forever assure him a high position in the history of American political thought.

Education and Public Life

Calhoun was born, March 18, 1782, in the Abbeville district in western South Carolina He was the son of Scotch-Irish, Calvinist parents, Patrick and Martha Caldwell Calhoun. Patrick, tough, resourceful, and a man of strong convictions, was a leader in the community. He served as judge, surveyor, and member of the state legislature. He, like his son, was a strong individualist, he believed in a maximum of individual freedom consistent with social order. Patrick opposed the adoption of the Federal Constitution on the ground that th power with which the central government was to be would prove destructive of liberty.

John Calhoun, in his early youth, had the benefit of little formal education What education he had, however, was excellent. For a brief time he attended a log-cabin school, where he learned to read and to write and to do arithmetic. Later he attended the school of his brother-in-law, Moses Waddell, and here he received a strict classical education. Within two years he had prepared himself for Yale. He entered the college as a junior at the age of twenty and, again in two years, completed the requirements for the bachelor's degree. At Yale, Calhoun studied under the formidable Dr. Timothy Dwight, Yale's president, a Federalist, and at times a strong anti-unionist Dr. Dwight was a bitter critic of Jefferson and his followers, and along with many other New Englanders in the early nineteenth century proposed secession as a solution for sectional conflict.

Following the two years in New Haven, Calhoun deve more than a year to a study of law at the school in Litchf Connecticut This institution, the first of its kind in Ame was established in 1774 by Judge Tapping Reeve (A Burr's brother-in-law), who was soon joined by Judge J Gould. Like Timothy Dwight, Reeve and Gould were a Federalists, disunionists even. Margaret Coit declares

> Not the South, not slavery, but Yale College and the Li field Law School made Calhoun a nullifier. In the little cl room, Reeve at white heat and Gould with cold logic arg the "right" of secession as the only refuge for minorit Logically, their argument was unimpeachable. Messrs. Dwigl Reeve, and Gould could not convince the young patriot fro South Carolina as to the desirability of secession, but they lef no doubts in his mind as to its legality.[1]

Returning to South Carolina, Calhoun read more law and was admitted to the bar in 1807. Despite his success as a practising attorney, the law could not hold Calhoun; and during the years 1808 and 1809 he served his district in the state legislature. In 1810 he was elected representative to the Congress of the United States, and he continued a member of that

[1] Margaret L. Coit, *John C. Calhoun, American Portrait* (Boston, 1950), p. 42.

body until 1817. In Congress the Republican[2] Calhoun, manifesting considerable irritation over England's disregard of neutral rights, advocated war. He was at one with the War Hawks, Clay among them, who clamored for war and who succeeded in effecting a declaration of war, much to the chagrin and disappointment of commercial New England. In Congress, too, the Nationalist Calhoun supported the Tariff of 1816, declaring that the measure would form "a new and most powerful cement, far outweighing any political objections that might be urged against the system"[3]

Appointed Secretary of War by President Monroe, Calhoun from 1817 to 1825 did much to improve the military establishment of the United States. From 1825 to 1832, Calhoun was Vice-president, first under John Quincy Adams and then gu̇ler Andrew Jackson. He resigned the Vice-presidency in willer to represent South Carolina in the Senate. With the Iption of a brief term as Secretary of State, Calhoun re-ageoied in the Senate until his death in 1850
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Calh

Cotton

assu the meantime, there had been developments in the United thoues and elsewhere which turned Calhoun from a nationalist firm state rights advocate and finally a sectionalist.

irst, cotton became an exceedingly profitable crop and,

[2] The term "Republican" as applied here must not be confused with in e present-day Republican Party In general, from 1789 to 1816, Fedalists opposed state rights, localism, a strict interpretation of the Constitution, and the interests of agriculture By 1816 the Federalists had all but disappeared as a party, and the Republicans alone controlled the destinies of the nation In 1828, or thereabouts, two wings of the Republican Party emerged the Democratic-Republican wing under the leadership of Andrew Jackson, the direct forerunner of the present-day Democratic Party, and the National-Republican wing under the leadership of Clay and Adams From 1834 to 1854, the Whig Party, formed by a combination of National-Republicans and other groups, opposed the Democrats. Finally, in 1854, the present-day Republican Party organized. Its first candidate for President was John C Frémont its first successful candidate was Abraham Lincoln (1860).

[3] Gaillard Hunt, *John C. Calhoun* (Philadelphia, 1908), p. 2

concurrently, slavery became a profitable institution In the eighteenth century the extension of cotton cultivation was severely restricted by the lack of any rapid means of removing the cotton seed from the fiber. The seeds were removed either by hand or by means of rollers, but this was profitable only in connection with the long-fibered or sea-island variety which was cultivated along the seaboard. The short-fibered or inland variety of cotton yielded little profit, for the seeds were difficult to remove Of course, the inland variety was grown, but in general only so much was raised as could be gathered and seeded by hand[4] Eli Whitney, in 1793, invented the cotton gin, an absurdly simple device with which a slave could seed fifty pounds of cotton a day. This machine enabled planters to turn more and more land over to the cultivation of cotton.

Second, the new spinning and weaving machines of the eighteenth century—Kay's flying shuttle, Hargreaves' spinning jenny, Crompton's "mule," and the application of water and steam power to their operation—speeded the production of cotton cloth and made ever more urgent the demand for more and more raw cotton and cheap labor. The following figures[5] will indicate just what had taken place:

Years	*Average Annual Production of Cotton in the U.S. in Pounds*	*Average Annual Exports of Cotton from the U.S in Pounds*	*Percentage of Crops Exported*
1791-95	5,200,000	1,738,700	33 43
1796-00	18,200,000	8,993,200	49 41
1801-05	59,600,000	33,603,800	56.38
1826-30	307,244,400	254,548,200	82.84
1831-35	398,521,600	329,077,600	82.57
1846-50	979,690,400	720,521,000	74 46
1856-60	1,749,496,500	1,383,711,200	79.51

[4] Ulrich Bonnell Phillips, *Life and Labor in the Old South* (Bosto 1929), Chs. VI, VII.

[5] Figures taken from *The South in the Building of the Natio* (Richmond, 1909), Vol. V, p. 211.

Third, westward expansion made slavery an overwhelming national issue In 1789, a political equilibrium existed between the slave-holding and the free states; but the acquisition of Louisiana and Texas, the widespread use of the cotton gin and other textile machines, opened a large and fertile area to the "peculiar institution" and frequently jeopardized the equality of slave and free states in the Senate.

Fourth, the North developed industrially while in the South cotton culture expanded. Members of Congress from the North furthered protectionist policies, while Southern members, fearing retaliation from abroad, advocated lower duties on imports.

Thus an economic conflict was engendered between the North and the South, and it was over the Tariff Acts of 1828 and 1832 that South Carolina espoused the doctrine of nullification [6] and threatened secession

State Rights and Nullification

Nullification was not born of this controversy. Nullification developed as a concomitant of the doctrine of state rights, which, in turn, had its genesis in the question of the nature of the union. Was the union intended to be a consolidated republic or a confederation of sovereign and independent states bound together by a formal compact, namely, the Constitution?

The state rights doctrine assumed several forms, depending upon circumstances. The most extreme statement of the doctrine, for example, held to the notion that the states did not relinquish their sovereignty when they agreed to enter the Union. When the people of each state, through especially elected conventions, chose to ratify the Constitution, they were accepting the limitations of that instrument as limitations upon their respective governments. This theory held that sovereignty did not reside in the state governments but

[6] The alleged right of a state of the Union to declare an Act ... gress inapplicable, null and void, and without force or effect, ... own borders.

in the people of the state, and that therefore what the people had given they may take away; that in no way was the sovereignty of the states diminished by the act of confederation. If the sovereign body elects to secede from the Union, there is nothing in the Constitution to prohibit it.

The state rights doctrine was also associated with the idea of a divided sovereignty. Hamilton, in the *Federalist*, asserted that "the plan of the convention aims only at a partial *union or consolidation*," the states clearly retaining "all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States."[7] And the United States Supreme Court, in *Chisholm* v. *Georgia*, decided in 1793, declared that the "United States are sovereign as to all the powers of government actually surrendered: each state in the Union is sovereign, as to all the powers reserved."[8] Who was to judge in case of conflict between the two sovereigns the Constitution did not specify; but many of the states, at one time or another, assumed that a decision in the matter rested with them.

Ten years after the adoption of the Constitution, Virginia and Kentucky adopted resolutions declaring the invalidity of the Alien and Sedition Acts.[9] The Virginia resolution,

7 Modern Library ed., p. 194

8 2 Dall. 419, 435.

9 Determined to suppress the attacks upon them by the Republicans and to retain their hold on the powers of government, the Federalists unwisely enacted four measures known collectively as the Alien and Sedition Acts

1. Extending from five to fourteen years the minimum period of residence in the United States before citizenship could be conferred upon an alien, and providing also for the registration of all white aliens arriving in the United States. (Act of June 18, 1798 1 *Stat. L.* 566-569.)

2. Authorizing the President to deport all aliens whom he should judge to be dangerous to the peace and safety of the United States (Act of June 25, 1798 1 *Stat L* 570-572)

3. Authorizing the President to order the arrest and deportation of alien enemies of all natives, citizens, and subjects of a foreign nation

fathered by James Madison, declared "explicitly and peremptorily" that the Assembly

> ...views the powers of the Federal Government as resulting from the compact, to which the States are parties; as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact, and that in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.[10]

Jefferson urged an even stronger statement from the Kentucky legislature That body resolved that the Federal Government was not "the exclusive or final *judge* of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers."[11] The resolution asserted that each party to the compact had an equal right to determine for itself whether the terms of the compact had been violated and the proper remedy to be invoked. The Alien and Sedition Acts were declared to be gross violations of the Constitution, and therefore void.

The state rights doctrine found expression not alone in the South. For example, the Embargo of 1807 was adjudged by the legislature of Massachusetts to be "unjust, oppressive and unconstitutional, and not legally binding on the citizens of this

with whom the United States was at war. (Act of July 6, 1798 1 *Stat. L* 577-578)

4. Providing severe penalties for anyone who, with intent to defame or to bring into contempt or disrepute, should utter or write false, scandalous, or malicious statements against the Government of the United States or its officers, or who should combine or conspire with others to oppose any duly constituted measures of the Government. (Act of July 14, 1798. 1 *Stat. L* 596-597)

[10] *The Writings of James Madison* (New York, 1906), Vol. VI, p. 326.

[11] Ethelbert Dudley Warfield, *The Kentucky Resolutions of 1798* (New York, 1887), p. 76.

state."[12] When the Federal Government called out the state militia to serve under Federal officers, the Connecticut legislature passed a resolution announcing that "the state of Connecticut is a FREE SOVEREIGN and INDEPENDENT state; that the United States are a *confederacy* of states; that we are a confederated and not a consolidated republic";[13] and that the demand of the Federal Government was violative of the Constitution.

In protest against the Tariff Act of 1828, Calhoun prepared for a special committee of the South Carolina legislature what is called the South Carolina *Exposition and Protest*. Adopted by the state legislature, this document explicitly asserted the legal right of a state of the Union to refuse obedience to a national act when the state deemed the act to be contrary to the Constitution. As stated in the *Exposition*:

> If it be conceded, as it must be by every one who is the least conversant with our institutions, that the sovereign powers delegated are divided between the General and State Governments, and that the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty—of which the States cannot be divested without losing their sovereignty itself—and being reduced to a subordinate corporate condition.[14]

But how is this remedy of nullification to be applied by the states? In answer to this question, the *Exposition* rejects the state legislature as the vehicle of nullification:

> It is sufficient that plausible reasons may be assigned against this mode of action, if there be one (and there is one) free from all objections. Whatever doubts may be raised as to the

[12] Quoted in Arthur Meier Schlesinger, *New Viewpoints in American History* (New York, 1922), p. 224.

[13] *Ibid.*, p. 225.

[14] *Reports and Public Letters of John C. Calhoun*, edited by Richard K. Crallé (New York, 1883), Vol. VI, p. 41.

question—whether the respective Legislatures fully represent the sovereignty of the States for this high purpose, there can be none as to the fact that a Convention fully represents them for all purposes whatever. Its authority, therefore, must remove every objection as to form, and leave the question on the single point of the right of the States to interpose at all. When convened, it will belong to the Convention itself to determine, authoritatively, whether the acts of which we complain be unconstitutional, and, if so, whether they constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition of the State to protect its rights [15]

The *Exposition* states clearly Calhoun's view of the effects of the Tariff Acts in the South, and it may be well, in order to comprehend better the *Disquisition*, to consider these effects as Calhoun understood them.

The Constitution gives to Congress the power to impose duties on imports for revenue, but this power is used by the majority, not only for revenue, but for the purpose "of rearing up the industry of one section of the country on the ruins of another" [16] and violating the Constitution in using a power for a legitimate object to accomplish another object, not legitimate. According to Calhoun·

So partial are the effects of the system, that its burdens are exclusively on one side and its benefits on the other. It imposes on the agricultural interest of the South, including the South-west, and that portion of the country particularly engaged in commerce and navigation, the burden not only of sustaining the system itself, but that also of the government.[17]

The South produced staples—cotton, rice, indigo—only one quarter of which were disposed of in the United States. The South was therefore an exporting section of the country, and her very life, her culture, her welfare, depended upon foreign markets. Producing staples primarily, the South was also a great importing section, and it was to her interest to buy abroad as cheaply as possible. The manufacturing North, on the other hand, fearing competition from abroad,

[15] *Ibid*, pp 44-45. [16] *Ibid*, p. 3.

governmental protection Thus the high duties specified in the Tariff Act of 1828 (and later in the Act of 1832) laid a heavy hand upon the South.

As the *Exposition* stated the matter, the South was required

> ... by the general competition of the world to sell *low*; and, on the other hand, by the Tariff to buy *high*. We cannot withstand this double action Our ruin must follow. In fact, our only permanent and safe remedy is, not from the rise in the price of what we *sell*, in which we can receive but little aid from our Government, but a reduction in the price of what we *buy*, which is prevented by the interference of the Government.[18]

The *Exposition* also declared that, by means of the tariff, the South was contributing more than its fair share to the support of the general government and receiving an even more inadequate return in benefits. As Calhoun pointed out:

> It has already been proved that our contribution, through e Custom-House, to the Treasury of the Union, amounts nually to $16,650,000, which leads to the inquiry—What .comes of so large an amount of the products of our labor, placed, by the operation of the system, at the disposal of Congress? One point is certain—a very small share returns to us, out of whose labor it is extracted . . . .[19]

The committee felt a thorough conviction, as a result of an examination of the annual appropriation acts,

> ... *that a sum much less than two millions of dollars falls to* our share of the disbursements; and that it would be a moderate estimate to place our contribution, above what we receive back, through all of the appropriations, at $15,000,000; constituting, to that great amount, an annual, continued, and uncompensated draft on the industry of the Southern States, through the Custom-House alone.[20]

Unsuccessful in effecting a reduction in the tariff rates in the Act of 1832, South Carolina, in convention, as proposed in the *Exposition*, adopted the Ordinance of Nullification.

[18] *Ibid.*, p. 21. [19] *Ibid.*, p 15. [20] *Loc cit.*

The Ordinance declared that "it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State", [21] and concluded with a warning that any attempt on the part of the national government to enforce the tariff laws within the State of South Carolina would be

> ... inconsistent with the longer continuance of South Carolina in the Union, and that the people of this State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate government, and do all other acts and things which sovereign and independent States may of right do.[22]

State rights, nullification, and secession developed primarily from a profound conviction that an economic system and the way of life of a minority were endangered by a political majority. Madison had recognized the problem in the *Federalist*, Number 51 "If a majority be united by a common interest, the rights of the minority will be insecure" [23]

The Ordinance of Nullification met with little favorable response in the South, outside of South Carolina. President Jackson requested Congress to pass a "Force Bill" giving the Chief Executive the power to use the Army and Navy to enforce the collection of revenue in South Carolina. At the same time Jackson urged the Congress to reduce the tariff rates The Tariff Act of 1833 brought lower duties, and South Carolina repealed the Ordinance of Nullification

When Calhoun resigned the Vice-Presidency to take his seat in the Senate, he joined a group of men representative of a conscious and defensive minority He sensed danger to the South in the constantly increasing population, the increasing financial, industrial, and political power, of the North. He saw the ties of finance binding North and West, and further

[21] *Niles' Register*, XLIII, p 219.

[23] Modern Library ed., p 339

isolating the South. He recognized the danger of William Lloyd Garrison[24] and his Abolitionists, and the attack upon slavery and the fugitive slave laws. He saw the Union that he loved departing more and more from the principles of federalism upon which it was originally based. He saw the ultimate impoverishment of the South and the destruction of its aristocracy and its slave system.[25] And for the rest of his life he fought, ever more bitterly in a losing battle, all measures designed to strengthen the nationalism of the period or to enhance the power of the central government or those measures which in any way threatened the interests of the minority of which he was so intimately and loyally a part.

He believed finally that the Union would survive only if a new political arrangement could be effected which would permit a balance of majority and minority interests.

And Calhoun, aware of the futility of the states' rights doctrine and nullification in the sense of the famous Ordinance, thought more in terms of sectional rights and interests and sectional nullification It was in this connection that Calhoun set forth what he called the "doctrine of the concurrent majority." Thus we come to a consideration of *A Disquisition on Government*.

The Nature of Man

Recognizing the weakness of any system of government based upon unrealistic assumptions, Calhoun, in the *Disquisition*, almost immediately poses the question, "What is man?" From study and observation he assumed that man is a social being Man's "inclinations and wants, physical and moral, irresistibly impel him to associate with his kind;

[24] William Lloyd Garrison (1805–1879) founder of the *Liberator* (1831) and the American Anti-Slavery Society (1833), was one of the most fearless and uncompromising leaders in the movement for the emancipation of the Negro population.

[25] See John Perry Pritchett, *Calhoun, His Defence of the South* (Poughkeepsie, 1937).

and he has, accordingly, never been found, in any age or country, in any state other than the social."[26]

Calhoun assumes, secondly, the inherent self-centeredness of man. Man is so constituted, says Calhoun, "that his direct or individual affections are stronger than his sympathetic or social feelings." He emphasizes that he purposely avoids use of the word "selfish," since this word "implies an unusual excess of the individual over the social feelings"—something "depraved and vicious"—and his intention is to "exclude such inference." This self-centeredness is a phenomenon of all "animated existence" and would seem to be connected "with the great law of self-preservation which pervades all that feels, from man down to the lowest and most insignificant reptile or insect."[27]

The Denial of Social Contract

Calhoun assumes, thirdly, that while man is a social animal and incapable of the full development of his faculties outside of the social state, this state cannot exist without government "In no age or country," Calhoun asserts, "has any society or community been found, whether enlightened or savage, without government of some description "[28] The reason for this is found in the second assumption, namely, the inherent self-centeredness of man. Man is the victim of man's suspicion, jealousy, anger, revenge, and this aspect of man must be controlled by government. But government cannot operate without men, government consists of men deciding and acting in the name of government; men who are subject to the same self-centeredness, the same passions, the same qualities, good and bad, as other men. Nonetheless, without government the existence of society would be jeopardized; without society, man's existence would be jeopardized Thus, according to Calhoun, government has its origin in the fundamental nature of man, and not in some prehistoric contract

26 See page 2. 27 See pages 4f. 28 See

The idea of social contract as utilized by Hobbes, Locke, and Rousseau held that man lived originally in a state of nature. In general, man originally was a solitary, independent entity, free of rules and regulations except those imposed upon himself by himself. Each man in theory was his own lawmaker, his own judge, his own executive Each man in theory possessed full, complete, and equal rights. Weary of his freedom or tired of the struggle of freeman against freeman, and in order to provide a greater freedom and security for all, men joined together by compact to form society. To do so, men agreed to divest themselves of certain of their natural rights—for example, the rights of individual lawmaking, individual judging, individual executing These rights were given to society by means of the social contract; and society, by a second contract, entrusted these rights to those who would rule, the governors But each man, having given up some of his natural rights, was still in possession of those not given, among them the inalienable rights of life, liberty, and the pursuit of happiness

The contract theory, through Locke and Rousseau, exercised considerable influence on American political thought. The theory was invoked in the Declaration of Independence. It is accepted explicitly in the first article of the Constitution of New Hampshire (1784): "All men are born equally free and independent: therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good." The preamble of the Massachusetts' constitution (1790) declares that the purpose of government is to protect the body politic and

> . . . to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life, and whenever these great rights are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

Paine and Jefferson accepted the social contract theory; however, the former developed a corollary, namely, the doc-

trine of the periodic reaffirmation of natural rights. Jefferson said that "every constitution . . . and every law naturally expires at the end of thirty-four years"[29] (later he reduced the number to nineteen). Madison, also, assumed the contractual origins of political organization.

Calhoun denied the whole concept of social contract and natural rights, both of which had had long and respectable careers. Society, Calhoun argued, was not created by contract; society has always existed, and man has never existed outside of society. A state of nature, as described by the contract writers, never existed, nor were men ever endowed with natural rights. The only rights men have ever known were those granted by society. It was thus that Calhoun could repudiate equality and uphold slavery.

The Doctrine of the Concurrent Majority

"It is of great importance in a republic," declares James Madison in the *Federalist*, Number 51, "not only to guard the society against the oppression of its rulers, but to guard one part of society against the injustice of the other part."[30] Two methods are proposed to resolve the problem of minority insecurity. The first is "by creating a will in the community independent of the majority—that is, of the society itself."[31] This is rejected, however, since it would pertain only to governments possessing "an hereditary or self-appointed authority." The second method is not a method at all, but a hoped-for condition arising from the nature of a federal republic: "society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority."[32] In little more than a quarter-century the South was to realize the futility of the second "method"

[29] Letter to James Madison, September 6, 1789, in *The W. Thomas Jefferson* (Washington, D. C., 1904), Vol. VII, p.
[30] Modern Library ed., p. 339. [31] *Loc. cit.*

The means finally evolved by Calhoun by which majority and minority interests were to be more evenly balanced is called the "doctrine of the concurrent majority." The numerical majority consisting of men subject to the self-centeredness referred to above can be tyrannical and oppressive in the area of a self-centered minority's rights and interests. Calhoun proposed that each sectional majority or each major-interest majority should have the constitutional power to veto acts of the federal government, which represented the numerical majority, when those acts were deemed, by a majority of the people comprising the section or interest, to be adverse to the welfare of section or interest It would be the will of a sectional majority acting concurrently with a numerical majority, the former endowed with the power to nullify the acts of the latter Calhoun believed that this device would tend to unite

> ... the most opposite and conflicting interests and to blend the whole in one common attachment for the country By giving to each interest, or portion, the power of self-protection, all strife and struggle between them for ascendancy is prevented; and thereby, not only every feeling calculated to weaken the attachment to the whole is suppressed, but the individual and social feelings are made to unite in one common devotion to country. Each sees and feels that it can best promote its own prosperity by conciliating the good will and promoting the prosperity of the others [33]

The concurrent majority is designed "to enlarge and secure the bounds of liberty, because it is better suited to prevent government from passing beyond its proper limits, and to restrict it to its primary end—the protection of the community." [34]

To the argument that government could accomplish nothing under so pluralistic a system, and perhaps recalling the Ordinance of Nullification and the Tariff Act of 1833, Calhoun replied that in true constitutional government authority is upheld and preserved, not by force, but by compromise. The

[33] See pages 37-38.
[34] See pages 45-46.

different interests or sections would be compelled "to unite in such measures only as would promote the prosperity of all, as the only means to prevent the suspension of the action of the government; and, thereby, to avoid anarchy, the greatest of all evils." [35]

Though Calhoun was not specific as to the practical application of the doctrine of the concurrent majority, he believed it to be in no way impracticable. He believed that history afforded various examples of its concrete use: Rome, the Iroquois Confederacy, Poland, and Great Britain.

In Rome, during the later years of the Republic, the tribunes of the plebs could veto a proposal under discussion in the Senate when the proposal was deemed inimical to the interests of the plebs [36]

The central government of the Iroquois Confederacy rested lightly upon the six nations Each nation—Mohawks, Oneidas, Cayugas, Senecas, Onandagas, and Tuscororas—was sovereign and independent, and each worked with the others through the central government only when there was unanimity of opinion. When one of the nations opposed a step on the ground of threatened interests, nothing could be done. By persuasion and compromise agreement was reached which was considered to be advantageous to all.[37]

In Poland, during the seventeenth century, there developed a device designed to guarantee a most extreme liberty verging on anarchy. This was the *liberum veto.* Its basis appears to have been the notion of the absolute equality of each and every Polish gentleman, and this led directly to the conclusion that the unanimous vote of the Diet was required to approve proposed legislation. At first the veto was used moderately;

[35] See page 30

[36] See Theodor Mommsen, *The History of Rome* (New York, 1887), Vol I, pp. 315-371; also B G. Niebuhr, *The History of Rome*, translated by Julius C Hare and Connop Thirlwall (London, 1855).

[37] See Henry R. Schoolcraft, *Notes on the Iroquois* (New York, 1846); also Lewis H. Morgan, *League of the Ho-De-No-Sau-Nee or Ir* (New York, 1922).

but in time it came to be used more and more frequently, and with disastrous results. In 1652 an individual veto prevented a continuation of the Diet beyond the constitutional six weeks' period as requested by the king, in order that important matters of state might be considered. In 1681 the *liberum veto* handicapped the Polish king in his preparations for war against the Turks. The veto was abolished in 1791.[38]

Calhoun distinguished three estates in English government: King, Lords, and Commons. The King as a practical matter was subordinate to Parliament, but he nonetheless stood as a symbol of a tax-consuming and appointing interest—an executive interest, and as such an estate. Thus the Lords with their special interests, the Commons with their special interests, and finally the King with his special interests faced each other, each empowered to veto, each exercising a concurrent action, and all reaching agreement as a result of compromise.[39]

Calhoun found manifestations of the doctrine in the separation of powers, checks and balances, and in the process of amending the Constitution of the United States. To change the Constitution formally, it is necessary for at least three-fourths of the States to approve a proposed amendment, a majority large enough to allow a significant minority to forestall the will of the majority.

EVALUATION

Calhoun holds in the *Disquisition* that—

> The necessary consequence of taking the sense of the community is . . . to give to each interest or portion of the community a negative on the others. It is this mutual negative among its various conflicting interests which invests each with

[38] *The Cambridge History of Poland*, edited by W. F. Reddaway (Cambridge, 1950), pp. 500, 511, 544-546.

[39] See in general George Burton Adams, *Constitutional History of England* (New York, 1921).

the power of protecting itself, and places the rights and safety of each where only they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others: and without this there can be no constitution It is this negative power, the power of preventing or arresting the action of the government, be it called by what term it may—*veto, interposition, nullification*, check, or balance of power—which, in fact, forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results *from the concurrent majority*. *Without this there can be* no negative, no constitution. . . It is, indeed, the negative power which makes the constitution and the positive which makes the government The one is the power of acting and *the other the power of preventing or arresting action*. The two, combined, make constitutional governments.[40]

Calhoun was aware of difficulty in arriving at the end set forth above. He was aware of difficulty in adapting formally the principle of the concurrent majority to the American constitutional system. He believed that in its operation it might be unwieldy. And he was none too clear as to the details of its practical application. To the South, comprising a closely knit group of states devoted almost exclusively to the production of cotton, the principle could have applied readily enough But Calhoun, although concerned primarily with the South as a sectional interest, contemplated the device as a protection to other "major interests" Presumably other "major interests" would include finance and labor, manufacturing and cattle-raising, wheat-growing and shipping How these interests would effectively exercise the principle of the concurrent majority, Calhoun does not make clear.

It is the conclusion of one writer, however, that the principle of the concurrent majority is "unwritten law" in the American political system, that it "is felt from the Presidency on down: in the nomination of candidates, the formation of cabinets, the operation of Congressional pressure groups, and

[40] See page 28.

so on; where 'availability' means the approval (and implied veto power) of every major group."[41]

"The concurrent veto in operation," says Charles M. Wiltse, "is a negative variation of the pressure group approach, which persists in one form or another in all diverse societies."[42] The American Federation of Labor, the National Association of Manufacturers, the American Bankers Association, the National Grange, the American Medical Association, the American Bar Association, and their respective state and local organizations, are examples of the organized special interests which serve to protect their members by persuasion or other pressure-group methods for or against legislative intervention, state and national "Is it not in this fashion," says Wiltse, "that we have come in our time to the public purchase and destruction of foodstuffs in order to raise prices to fantastic levels in the interest of a special group? Is it not thus that we have come to pay wages for work unperformed, and rent for land unused?"[43]

Time Magazine, in its issue of May 19, 1952, detected in Georgia Senator Richard Russell's bid for the Democratic Presidential nomination an effort on the part of the South to maintain a solid front in order to veto some other unacceptable candidate and to force a compromise on FEPC.[44] The

[41] Margaret L Coit, "Calhoun and the Downfall of States' Rights," in *The Virginia Quarterly Review* (Spring, 1952), Vol XXVIII, No. 2, p. 199

[42] Charles M. Wiltse, *John C. Calhoun, Sectionalist*, 1840-1850 (New York, 1951), p. 426

[43] *Loc cit.*

[44] Fair Employment Practice Commission. President Truman, in his Message to Congress on Civil Rights, February 2, 1948, recommended that legislation be adopted which would prohibit discrimination in employment based on race, color, religion, or national origin: "The legislation should create a Fair Employment Practice Commission with authority to prevent discrimination by employers and labor unions, trade and professional associations, and Government agencies and employment bureaus." (*Congressional Record*, Eightieth Congress, second session, p. 928.)

rule, revoked in 1936, that a Democratic Presidential candidate must be nominated by a two-thirds vote of the Convention gave the South an effective weapon to forestall "unacceptable" candidacies. The Democratic Party, substituting majority rule for the two-thirds rule, has led the South to try another protective device, namely, the revolt. Senator Russell and the South knew that his bid for the nomination was futile, but as *Time* has it, "He is working to build up the South's old veto power . . . ,"[45] that is, to build up sufficient strength to demand and secure negotiation and compromise with the majority of the party, and thus to nominate a candidate acceptable to the South. As *Time* says:

> Calhounism survives in a great and much maligned American institution, the smoke-filled room, where party leaders can do what the ballot box cannot do measure the intensity with which *various groups will react for or against (especially* against) certain proposals The majority may be mildly in favor of a policy, and a minority (sectional or otherwise) may be fanatically against it Under those circumstances, the American politician will often withhold support until he can find a way of placating the minority.[46]

The dark prophecies of John C Calhoun as to the fate of the South at the hands of Northern financiers, industrialists, and political majorities came to pass with a vengeance. The conditions to which the Southern people were reduced by war and reconstruction, politically, socially, and economically, are well known and need no recounting here, but despite improvement the struggle between the two regions, which began long before the Civil War, continued. With the close of the military phase of the struggle, "The tyranny of unrestrained majorities was left to work its will in triumph."[47]

Nevertheless, the conditions against which Calhoun strove are reflected in a statement of Ex-Governor Ellis Gibbs Arnall of Georgia, in 1946:

45 Courtesy of *Time*; copyright of *Time, Inc*, *May 19, 1952*
46 *Loc. cit.* 47 Pritchett, *op cit*, p

terms of mass-man; he thought in terms of man as he is, not as he ought to be or as Calhoun would have liked him to be; he thought in terms of principle, and not in terms of expediency. Granted the unworthiness of the defense of slavery, he nonetheless thought in terms of diversity and not a deadly conformity, and he expressed his thoughts boldly in behalf of diversity without fear of consequence. He stood forth as a man, an individual, self-poised and free.

C. GORDON POST

VASSAR COLLEGE
June, 1953

GENERAL CHRONOLOGY OF THE CALHOUN PERIOD

1781 Lord Cornwallis surrenders at Yorktown, Virginia.
1782 *Calhoun born in South Carolina, March 18.* Daniel Webster born in New Hampshire, January 18.
1783 Treaty of peace between Great Britain and the United States, Paris
1787 Northwest Ordinance Constitutional Convention, Philadelphia.
1789 George Washington, President of the United States First Congress meets in New York, March 4.
1792 Eli Whitney invents the cotton gin.
1794 Jay's Treaty.
1797 John Adams, President of the United States.
1798 Alien and Sedition Acts The Virginia and Kentucky Resolutions.
1800 John Brown born in Connecticut.
1801 Thomas Jefferson, President of the United States.
1802 *Calhoun enters Yale College*
1803 Louisiana Territory acquired by the United States.
1804 *Calhoun graduates from Yale*
1805-6 *Calhoun attends the law school in Litchfield, Connecticut.*
1806-8 *Calhoun practices law.*
1807 Embargo Act. Robert Fulton develops the first successful steam vessel.
1808-9 *Calhoun a member of the Legislature of South Carolina.*
1809 James Madison, President of the United [illegible] Abraham Lincoln born in Kentucky, Februa[illegible]

1811	*Calhoun marries his cousin, Floride Bonneau Colhoun.*
1811-17	*Calhoun a member of the United States House of Representatives. Chairman, Committee on Foreign Relations.*
1812-14	War with Great Britain
1816	*Calhoun supports protective tariff.*
1817	James Monroe, President of the United States.
1817-25	*Calhoun, Secretary of War.*
1820	The Missouri Compromise.
1823	Announcement of the Monroe Doctrine.
1825	John Quincy Adams, President of the United States. Erie Canal completed.
1825-32	*Calhoun, Vice-President of the United States.*
1828	*Calhoun prepares the South Carolina* "Exposition and Protest" *in opposition to the Tariff Act of 1828.*
1829	Andrew Jackson, President of the United States. The Peggy Eaton affair.
1830	Webster's reply to Hayne on the question of states' rights.
1831	*Calhoun's "Address to the People of South Carolina" elaborating his views on the nature of the Union*
1832	Tariff Act. South Carolina's Ordinance of Nullification. Andrew Jackson's Nullification Proclamation.
1833	Debate in Senate on the Force Bill. Compromise tariff act. Ordinance of Nullification repealed.
1832-41	*Calhoun a member of the United States Senate.*
1837	Martin Van Buren, President of the United States.
1841	William Henry Harrison, President of the United States, dies one month after inauguration; succeeded by John Tyler.

1844-45 *Calhoun, Secretary of State.*

1845-50 *Calhoun a member of the United States Senate. At work on* A Disquisition on Government *and* A Discourse on the Constitution and Government of the United States.

1845 James Knox Polk, President of the United States. Texas annexed

1846 Wilmot Proviso Dred Scott, a slave, sues for his freedom in a Missouri court.

1846-48 War with Mexico

1849 Zachary Taylor, President of the United States.

1850 *Calhoun dies in Washington, D C, March 31. Buried in St. Philip's Churchyard, Charleston, South Carolina.* Compromises of 1850. Fugitive Slave Law.

1853 Franklin Pierce, President of the United States.

1854 Kansas-Nebraska Act.

1857 James Buchanan, President of the United States. The United States Supreme Court decides the Dred Scott case

1859 John Brown and his followers seize Harper's Ferry.

1860 Abraham Lincoln elected President of the United States. South Carolina secedes from the Union, December 20.

1861 Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, Texas, and Virginia, secede. Abraham Lincoln inaugurated March 4 The attack on Fort Sumter. The President calls for 75,000 volunteers.

1861-65 The War between the States.

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NOTE ON THE TEXT

The present edition of *Calhoun's Disquisition on Government* and selections from *A Discourse on the Constitution and Government of the United States* is based on the earliest publication of these writings in *The Works of John C. Calhoun*, 1853, edited by Richard K. Crallé. The text follows the original except for minor editorial changes in spelling, capitalization, and punctuation. For the convenience of the reader, the editor has also supplied subheads, which are set in brackets.

O. P.

A DISQUISITION ON GOVERNMENT

[The Nature of Man and the Origin of Government]

In order to have a clear and just conception of the nature and object of government, it is indispensable to understand correctly what that constitution or law of our nature is in which government originates, or to express it more fully and accurately—that law without which government would not and with which it must necessarily exist. Without this, it is as impossible to lay any solid foundation for the science of government as it would be to lay one for that of astronomy without a like understanding of that constitution or law of the material world according to which the several bodies composing the solar system mutually act on each other and by which they are kept in their respective spheres The first question, accordingly, to be considered, What is that constitution or law of our nature without which government would not exist and with which its existence is necessary?

In considering this, I assume as an incontestable fact that man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and he has, accordingly, never been found, in any age or country, in any state other than the social. In no other, indeed, could he exist, and in no other—were it possible for him to exist—could he attain to a full development of his moral and intellectual faculties or raise himself, in the scale of being, much above the level of the brute creation.

I next assume also as a fact not less incontestable that, while man is so constituted as to make the social state necessary to his existence and the full development of his faculties, this state itself cannot exist without government. The assumption rests on universal experience. In no age or country

any society or community ever been found, whether enlightened or savage, without government of some description.

Having assumed these as unquestionable phenomena of our nature, I shall, without further remark, proceed to the investigation of the primary and important question, What is that constitution of our nature which, while it impels man to associate with his kind, renders it impossible for society to exist without government?

The answer will be found in the fact (not less incontestable than either of the others) that, while man is created for the social state and is accordingly so formed as to feel what affects others as well as what affects himself, he is, at the same time, so constituted as to feel more intensely what affects him directly than what affects him indirectly through others, or to express it differently, he is so constituted that his direct or individual affections are stronger than his sympathetic or social feelings. I intentionally avoid the expression "*selfish* feelings" as applicable to the former, because, as commonly used, it implies an unusual excess of the individual over the social feelings in the person to whom it is applied and, consequently, something depraved and vicious. My object is to exclude such inference and to restrict the inquiry exclusively to facts in their bearings on the subject under consideration, viewed as mere phenomena appertaining to our nature—constituted as it is; and which are as unquestionable as is that of gravitation or any other phenomenon of the material world.

In asserting that our individual are stronger than our social feelings, it is not intended to deny that there are instances, growing out of peculiar relations—as that of a mother and her infant—or resulting from the force of education and habit over peculiar constitutions, in which the latter have overpowered the former, but these instances are few and always regarded as something extraordinary. The deep impression they make, whenever they occur, is the strongest proof that they are regarded as exceptions to some general and well-understood law of our nature, just as some of the

minor powers of the material world are apparently to gravitation.

I might go farther and assert this to be a phenomenon not of our nature only, but of all animated existence throughout its entire range, so far as our knowledge extends. It would, indeed, seem to be essentially connected with the great law of self-preservation which pervades all that feels, from man down to the lowest and most insignificant reptile or insect. In none is it stronger than in man. His social feelings may, indeed, in a state of safety and abundance, combined with high intellectual and moral culture, acquire great expansion and force, but not so great as to overpower this all-pervading and essential law of animated existence.

But that constitution of our nature which makes us feel more intensely what affects us directly than what affects us indirectly through others necessarily leads to conflict between individuals Each, in consequence, has a greater regard for his own safety or happiness than for the safety or happiness of others, and, where these come in opposition, is ready to sacrifice the interests of others to his own And hence the tendency to a universal state of conflict between individual and individual, accompanied by the connected passions of suspicion, jealousy, anger, and revenge—followed by insolence, fraud, and cruelty—and, if not prevented by some controlling power, ending in a state of universal discord and confusion destructive of the social state and the ends for which it is ordained. This controlling power, wherever vested or by whomsoever exercised, is *Government.*

It follows, then, that man is so constituted that government is necessary to the existence of society, and society to his existence and the perfection of his faculties It follows also that government has its origin in this twofold constitution of his nature: the sympathetic or social feelings constituting the remote, and the individual or direct the proximate, cause.

If man had been differently constituted in either particular —if, instead of being social in his nature, he had
without sympathy for his kind and independent

any society or community ever been found, whether enlightened or savage, without government of some description.

Having assumed these as unquestionable phenomena of our nature, I shall, without further remark, proceed to the investigation of the primary and important question, What is that constitution of our nature which, while it impels man to associate with his kind, renders it impossible for society to exist without government?

The answer will be found in the fact (not less incontestable than either of the others) that, while man is created for the social state and is accordingly so formed as to feel what affects others as well as what affects himself, he is, at the same time, so constituted as to feel more intensely what affects him directly than what affects him indirectly through others, or, to express it differently, he is so constituted that his direct or individual affections are stronger than his sympathetic or social feelings. I intentionally avoid the expression "*selfish* feelings" as applicable to the former, because, as commonly used, it implies an unusual excess of the individual over the social feelings in the person to whom it is applied and, consequently, something depraved and vicious. My object is to exclude such inference and to restrict the inquiry exclusively to facts in their bearings on the subject under consideration, viewed as mere phenomena appertaining to our nature—constituted as it is; and which are as unquestionable as is that of gravitation or any other phenomenon of the material world.

In asserting that our individual are stronger than our social feelings, it is not intended to deny that there are instances, growing out of peculiar relations—as that of a mother and her infant—or resulting from the force of education and habit over peculiar constitutions, in which the latter have overpowered the former, but these instances are few and always regarded as something extraordinary. The deep impression they make, whenever they occur, is the strongest proof that they are regarded as exceptions to some general and well-understood law of our nature, just as some of the

have to be encouraged by rewards to become more selfish, and deterred by punishments from being too benevolent; and this, too, by a government administered by those who, on the supposition, would have the greatest aversion for selfishness and the highest admiration for benevolence.

To the Infinite Being, the Creator of all, belongs exclusively the care and superintendence of the whole. He, in his infinite wisdom and goodness, has allotted to every class of animated beings its condition and appropriate functions and has endowed each with feelings, instincts, capacities, and faculties best adapted to its allotted condition. To man, he has assigned the social and political state as best adapted to develop the great capacities and faculties, intellectual and moral, with which he has endowed him, and has, accordingly, constituted him so as not only to impel him into the social state, but to make government necessary for his preservation and well-being.

[PROTECTION AGAINST THE ABUSE OF POWER BY GOVERNMENT]

But government, although intended to protect and preserve society, has itself a strong tendency to disorder and abuse of its powers, as all experience and almost every page of history testify. The cause is to be found in the same constitution of our nature which makes government indispensable. The powers which it is necessary for government to possess in order to repress violence and preserve order cannot execute themselves. They must be administered by men in whom, like others, the individual are stronger than the social feelings. And hence the powers vested in them to prevent injustice and oppression on the part of others will, if left unguarded, be by them converted into instruments to oppress the rest of the community. That by which this is prevented, by whatever name called, is what is meant by *constitution*, in its most comprehensive sense, when applied to *government*.

Having its origin in the same principle of our *constitution* stands to *government* as *government* :

society; and as the end for which society is ordained would be defeated without government, so that for which government is ordained would, in a great measure, be defeated without constitution. But they differ in this striking particular. There is no difficulty in forming government. It is not even a matter of choice whether there shall be one or not. Like breathing, it is not permitted to depend on our volition. Necessity will force it on all communities in some one form or another. Very different is the case as to constitution. Instead of a matter of necessity, it is one of the most difficult tasks imposed on man to form a constitution worthy of the name, while to form a perfect one—one that would completely counteract the tendency of government to oppression and abuse and hold it strictly to the great ends for which it is ordained—has thus far exceeded human wisdom, and possibly ever will. From this another striking difference results. Constitution is the contrivance of man, while government is of divine ordination Man is left to perfect what the wisdom of the Infinite ordained as necessary to preserve the race

With these remarks I proceed to the consideration of the important and difficult question, How is this tendency of government to be counteracted? Or, to express it more fully, How can those who are invested with the powers of government be prevented from employing them as the means of aggrandizing themselves instead of using them to protect and preserve society? It cannot be done by instituting a higher power to control the government and those who administer it This would be but to change the seat of authority and to make this higher power, in reality, the government, with the same tendency on the part of those who might control its powers to pervert them into instruments of aggrandizement. Nor can it be done by limiting the powers of government so as to make it too feeble to be made an instrument of abuse, for, passing by the difficulty of so limiting its powers without creating a power higher than the government itself to enforce the observance of the limitations, it is a sufficient objection that it would, if practicable, defeat the end for which govern-

ment is ordained, by making it too feeble to protect and preserve society. The powers necessary for this purpose will ever prove sufficient to aggrandize those who control it at the expense of the rest of the community.

In estimating what amount of power would be requisite to secure the objects of government, we must take into the reckoning what would be necessary to defend the community against external as well as internal dangers Government must be able to repel assaults from abroad, as well as to repress violence and disorders within It must not be overlooked that the human race is not comprehended in a single society or community. The limited reason and faculties of man, the great diversity of language, customs, pursuits, situation, and complexion, and the difficulty of intercourse, with various other causes, have, by their operation, formed a great many separate communities acting independently of each other. Between these there is the same tendency to conflict —and from the same constitution of our nature—as between men individually; and even stronger, because the sympathetic or social feelings are not so strong between different communities as between individuals of the same community. So powerful, indeed, is this tendency that it has led to almost incessant wars between contiguous communities for plunder and conquest or to avenge injuries, real or supposed.

So long as this state of things continues, exigencies will occur in which the entire powers and resources of the community will be needed to defend its existence. When this is at stake, every other consideration must yield to it. Self-preservation is the supreme law as well with communities as with individuals. And hence the danger of withholding from government the full command of the power and resources of the state and the great difficulty of limiting its powers consistently with the protection and preservation of the community. And hence the question recurs, By what means can government, without being divested of the full command of the resources of the community, be prevented from abusing its powers?

The question involves difficulties which, from the earliest ages, wise and good men have attempted to overcome—but hitherto with but partial success. For this purpose many devices have been resorted to, suited to the various stages of intelligence and civilization through which our race has passed, and to the different forms of government to which they have been applied. The aid of superstition, ceremonies, education, religion, organic arrangements, both of the government and the community, has been, from time to time, appealed to. Some of the most remarkable of these devices, whether regarded in reference to their wisdom and the skill displayed in their application or to the permanency of their effects, are to be found in the early dawn of civilization—in the institutions of the Egyptians, the Hindus, the Chinese, and the Jews. The only materials which that early age afforded for the construction of constitutions, when intelligence was so partially diffused, were applied with consummate wisdom and skill. To their successful application may be fairly traced the subsequent advance of our race in civilization and intelligence, of which we now enjoy the benefits For without a constitution—something to counteract the strong tendency of government to disorder and abuse and to give stability to political institutions—there can be little progress or permanent improvement.

[Constitutional Government]

In answering the important question under consideration it is not necessary to enter into an examination of the various contrivances adopted by these celebrated governments to counteract this tendency to disorder and abuse, nor to undertake to treat of constitution in its most comprehensive sense. What I propose is far more limited: to explain on what principles government must be formed in order to resist by its own interior structure—or to use a single term, *organism*—the tendency to abuse of power. This structure, or organism, is what is meant by constitution, in its strict and more usual

sense; and it is this which distinguishes what are called "constitutional" governments from "absolute." It is in this strict and more usual sense that I propose to use the term hereafter.

How government, then, must be constructed in order to counteract, through its organism, this tendency on the part of those who make and execute the laws to oppress those subject to their operation is the next question which claims attention.

There is but one way in which this can possibly be done, and that is by such an organism as will furnish the ruled with the means of resisting successfully this tendency on the part of the rulers to oppression and abuse. Power can only be resisted by power—and tendency by tendency. Those who exercise power and those subject to its exercise—the rulers and the ruled—stand in antagonistic relations to each other. The same constitution of our nature which leads rulers to oppress the ruled—regardless of the object for which government is ordained—will, with equal strength, lead the ruled to resist when possessed of the means of making peaceable and effective resistance Such an organism, then, as will furnish the means by which resistance may be systematically and peaceably made on the part of the ruled to oppression and abuse of power on the part of the rulers is the first and indispensable step toward *forming* a constitutional government. And as this can only be effected by or through the right of suffrage—the right on the part of the ruled to choose their rulers at proper intervals and to hold them thereby responsible for their conduct—the responsibility of the rulers to the ruled, through the right of suffrage, is the indispensable and primary principle in the *foundation* of a constitutional government. When this right is properly guarded, and the people sufficiently enlightened to understand their own rights and the interests of the community and duly to appreciate the motives and conduct of those appointed to make and execute the laws, it is all-sufficient to give to those who elect effective control over those they have elected.

I call the right of suffrage the indispensable and ...

principle, for it would be a great and dangerous mistake to suppose, as many do, that it is, of itself, sufficient to form constitutional governments. To this erroneous opinion may be traced one of the causes why so few attempts to form constitutional governments have succeeded, and why of the few which have, so small a number have had durable existence. It has led not only to mistakes in the attempts to form such governments, but to their overthrow when they have, by some good fortune, been correctly formed. So far from being, of itself, sufficient—however well guarded it might be and however enlightened the people—it would, unaided by other provisions, leave the government as absolute as it would be in the hands of irresponsible rulers; and with a tendency, at least as strong, toward oppression and abuse of its power, as I shall next proceed to explain.

The right of suffrage, of itself, can do no more than give complete control to those who elect over the conduct of those they have elected. In doing this, it accomplishes all it possibly can accomplish This is its aim—and when this is attained, its end is fulfilled. It can do no more, however enlightened the people or however extended or well guarded the right may be. The sum total, then, of its effects, when most successful, is to make those elected the true and faithful representatives of those who elected them—instead of irresponsible rulers, as they would be without it; and thus, by converting it into an agency, and the rulers into agents, to divest government of all claims to sovereignty and to retain it unimpaired to the community. But it is manifest that the right of suffrage in making these changes transfers, in reality, the actual control over the government from those who make and execute the laws to the body of the community and thereby places the powers of the government as fully in the mass of the community as they would be if they, in fact, had assembled, made, and executed the laws themselves without the intervention of representatives or agents. The more perfectly it does this, the more perfectly it accomplishes its

ends; but in doing so, it only changes the seat of authority without counteracting, in the least, the tendency of the government to oppression and abuse of its powers.

If the whole community had the same interests so that the interests of each and every portion would be so affected by the action of the government that the laws which oppressed or impoverished one portion would necessarily oppress and impoverish all others—or the reverse—then the right of suffrage, of itself, would be all-sufficient to counteract the tendency of the government to oppression and abuse of its powers, and, of course, would form, of itself, a perfect constitutional government. The interest of all being the same, by supposition, as far as the action of the government was concerned, all would have like interests as to what laws should be made and how they should be executed. All strife and struggle would cease as to who should be elected to make and execute them. The only question would be, who was most fit, who the wisest and most capable of understanding the common interest of the whole This decided, the election would pass off quietly and without party discord, as no one portion could advance its own peculiar interest without regard to the rest by electing a favorite candidate.

But such is not the case. On the contrary, nothing is more difficult than to equalize the action of the government in reference to the various and diversified interests of the community; and nothing more easy than to pervert its powers into instruments to aggrandize and enrich one or more interests by oppressing and impoverishing the others; and this, too, under the operation of laws couched in general terms and which, on their face, appear fair and equal. Nor is this the case in some particular communities only. It is so in all—the small and the great, the poor and the rich—irrespective of pursuits, productions, or degrees of civilization; with, however, this difference, that the more extensive and populous the country, the more diversified the condition and pursuits of its population, and the richer, more luxurious, and dissimilar

the people, the more difficult is it to equalize the action of the government, and the more easy for one portion of the community to pervert its powers to oppress and plunder the other.

Such being the case, it necessarily results that the right of suffrage, by placing the control of the government in the community, must, from the same constitution of our nature which makes government necessary to preserve society, lead to conflict among its different interests—each striving to obtain possession of its powers as the means of protecting itself against the others or of advancing its respective interests regardless of the interests of others For this purpose, a struggle will take place between the various interests to obtain a majority in order to control the government. If no one interest be strong enough, of itself, to obtain it, a combination will be formed between those whose interests are most alike —each conceding something to the others until a sufficient number is obtained to make a majority. The process may e slow and much time may be required before a compact, ganized majority can be thus formed, but formed it will be in time, even without preconcert or design, by the sure workings of that principle or constitution of our nature in which government itself originates. When once formed, the community will be divided into two great parties—a major and minor—between which there will be incessant struggles on the one side to retain, and on the other to obtain the majority and, thereby, the control of the government and the advantages it confers.

[The Powers of Government]

So deeply seated, indeed, is this tendency to conflict between the different interests or portions of the community that it would result from the action of the government itself, even though it were possible to find a community where the people were all of the same pursuits, placed in the same condition of life, and in every respect so situated as to be without inequality of condition or diversity of interests. The advantages of possessing the control of the powers of the govern-

ment, and thereby of its honors and emoluments, are, of themselves, exclusive of all other considerations, ample to divide even such a community into two great hostile parties.

In order to form a just estimate of the full force of these advantages, without reference to any other consideration, it must be remembered that government—to fulfill the ends for which it is ordained, and more especially that of protection against external dangers—must in the present condition of the world be clothed with powers sufficient to call forth the resources of the community and be prepared at all times to command them promptly in every emergency which may possibly arise. For this purpose large establishments are necessary, both civil and military (including naval, where, from situation, that description of force may be required), with all the means necessary for prompt and effective action, such as fortifications, fleets, armories, arsenals, magazines, arms of all descriptions, with well-trained forces in sufficient numbers to wield them with skill and energy whenever the occasion requires it. The administration and management of a government with such vast establishments must necessarily require a host of employees, agents, and officers—of whom many must be vested with high and responsible trusts and occupy exalted stations accompanied with much influence and patronage. To meet the necessary expenses, large sums must be collected and disbursed, and for this purpose heavy taxes must be imposed, requiring a multitude of officers for their collection and disbursement The whole united must necessarily place under the control of government an amount of honors and emoluments sufficient to excite profoundly the ambition of the aspiring and the cupidity of the avaricious, and to lead to the formation of hostile parties and violent party conflicts and struggles to obtain the control of the government. And what makes this evil remediless through the right of suffrage of itself, however modified or carefully guarded or however enlightened the people, is the fact that, as far as the honors and emoluments of the government and its fiscal action are concerned, it is impossible to equalize it. The reason is obvious. Its honors and emoluments, however great, can

to the lot of but a few, compared to the entire number of the community and the multitude who will seek to participate in them. But without this there is a reason which renders it *impossible to equalize the action of the government* so far as its fiscal operation extends—which I shall next explain.

[THE EFFECTS OF UNEQUAL TAXATION AND DISBURSEMENT]

Few, comparatively, as they are, the agents and employees of the government constitute that portion of the community who are the exclusive recipients of the proceeds of the taxes. Whatever amount is taken from the community in the form of taxes, if not lost, goes to them in the shape of expenditures or disbursements. The two—disbursement and taxation—constitute the fiscal action of the government. They are correlatives. What the one takes from the community under the name of taxes is transferred to the portion of the community who are the recipients under that of disbursements. But as the recipients constitute only a portion of the community, it follows, taking the two parts of the fiscal process together, that its action must be unequal between the payers of the taxes and the recipients of their proceeds. Nor can it be otherwise; unless what is collected from each individual in the shape of taxes shall be returned to him in that of disbursements, which would make the process nugatory and absurd. Taxation may, indeed, be made equal, regarded separately from disbursement. Even this is no easy task, but the two united cannot possibly be made equal

Such being the case, it must necessarily follow that some one portion of the community must pay in taxes more than it receives back in disbursements, while another receives in disbursements more than it pays in taxes. It is, then, manifest, taking the whole process together, that taxes must be, in effect, bounties to that portion of the community which receives more *in disbursements than it pays in taxes, while to the other* which pays in taxes more than it receives in disbursements they are taxes in reality—burthens instead of bounties. This consequence is unavoidable. It results from the nature of

the process, be the taxes ever so equally laid and the disbursements ever so fairly made in reference to the public service.

It is assumed, in coming to this conclusion, that the disbursements are made within the community. The reasons assigned would not be applicable if the proceeds of the taxes were paid in tribute or expended in foreign countries. In either of these cases the burthen would fall on all in proportion to the amount of taxes they respectively paid.

Nor would it be less a bounty to the portion of the community which received back in disbursements more than it paid in taxes because received as salaries for official services, or payments to persons employed in executing the works required by the government, or furnishing it with its various supplies, or any other description of public employment—instead of being bestowed gratuitously It is the disbursements which give additional and, usually, very profitable and honorable employments to the portion of the community where they are made. But to create such employments by disbursements is to bestow on the portion of the community to whose lot the disbursements may fall a far more durable and lasting benefit—one that would add much more to its wealth and population—than would the bestowal of an equal sum gratuitously; and hence, to the extent that the disbursements exceed the taxes, it may be fairly regarded as a bounty The very reverse is the case in reference to the portion which pays in taxes more than it receives in disbursements. With them profitable employments are diminished to the same extent, and population and wealth correspondingly decreased.

The necessary result, then, of the unequal fiscal action of the government is to divide the community into two great classes: one consisting of those who, in reality, pay the taxes and, of course, bear exclusively the burthen of supporting the government; and the other, of those who are the recipients of their proceeds through disbursements, and who are, in fact, supported by the government; or, in fewer words, to divide it into tax-payers and tax-consumers.

But the effect of this is to place them in antagonistic relations in reference to the fiscal action of the government

the entire course of policy therewith connected. For the greater the taxes and disbursements, the greater the gain of the one and the loss of the other, and vice versa; and consequently, the more the policy of the government is calculated to increase taxes and disbursements, the more it will be *favored by the one and opposed by the other.*

The effect, then, of every increase is to enrich and strengthen the one, and impoverish and weaken the other. This, indeed, may be carried to such an extent that one class or portion of the community may be elevated to wealth and power, and the other depressed to abject poverty and dependence, simply by the fiscal action of the government; and this too through disbursements only—even under a system of equal taxes imposed for revenue only. If such may be the effect of taxes and disbursements when confined to their legitimate objects—that of raising revenue for the public service—some conception may be formed how one portion of the community may be crushed, and another elevated on its ruins, by systematically perverting the power of taxation and disbursement for the purpose of aggrandizing and building up one portion of the community at the expense of the other. That it *will* be so used, unless prevented, is, from the constitution of man, just as certain as that it *can* be so used, and that, if not prevented, it must give rise to two parties and to violent conflicts and struggles between them to obtain the control of the government is, *for the same reason, not less certain.*

Nor is it less certain, from the operation of all these causes, that the dominant majority, for the time, would have the *same tendency to oppression and abuse of power which,* without the right of suffrage, irresponsible rulers would have. No reason, indeed, can be assigned why the latter would abuse their power, which would not apply, with equal force, to the former. The dominant majority, for the time, would in reality, through the right of suffrage, be the rulers—the controlling, governing, and irresponsible power; and those who make and execute the laws would, for the time, be in reality but *their* representatives and agents.

Nor would the fact that the former would constitute a

majority of the community counteract a tendency originating in the constitution of man and which, as such, cannot depend on the number by whom the powers of the government may be wielded. Be it greater or smaller, a majority or minority, it must equally partake of an attribute inherent in each individual composing it, and, as in each the individual is stronger than the social feelings, the one would have the same tendency as the other to oppression and abuse of power. The reason applies to government in all its forms—whether it be that of the one, the few, or the many. In each there must, of necessity, be a governing and a governed—a ruling and a subject portion The one implies the other, and in all, the two bear the same relation to each other—and have, on the part of the governing portion, the same tendency to oppression and abuse of power. Where the majority is that portion, it matters not how its powers may be exercised—whether directly by themselves or indirectly through representatives or agents. Be it which it may, the minority, for the time, will be as much the governed or subject portion as are the people in an aristocracy or the subjects in a monarchy. The only difference in this respect is that in the government of a majority the minority may become the majority, and the majority the minority, through the right of suffrage, and thereby change their relative positions without the intervention of force and revolution. But the duration or uncertainty of the tenure by which power is held cannot, of itself, counteract the tendency inherent in government to oppression and abuse of power. On the contrary, the very uncertainty of the tenure, combined with the violent party warfare which must ever precede a change of parties under such governments, would rather tend to increase than diminish the tendency to oppression.

[THE CONCURRENT MAJORITY]

As, then, the right of suffrage, without some other provision, cannot counteract this tendency of government, the question for consideration is, What is that other pr[illegible] This demands the most serious consideration, for of

questions embraced in the science of government it involves a principle, the most important and the least understood, and when understood, the most difficult of application in practice. It is, indeed, emphatically that principle which *makes* the constitution, in its strict and limited sense.

From what has been said, it is manifest that this provision must be of a character calculated to prevent any one interest or combination of interests from using the powers of government to aggrandize itself at the expense of the others. Here lies the evil. and just in proportion as it shall prevent, or fail to prevent it, in the same degree it will effect, or fail to effect, the end intended to be accomplished. There is but one certain mode in which this result can be secured, and that is by the adoption of some restriction or limitation which shall so effectually prevent any one interest or combination of interests from obtaining the exclusive control of the government as to render hopeless all attempts directed to that end. There is, [illegible] but one mode in which this can be effected, and that [illegible]s by taking the sense of each interest or portion of the community which may be unequally and injuriously affected by the action of the government separately, through its own majority or in some other way by which its voice may be fairly expressed, and to require the consent of each interest either to put or to keep the government in action. This, too, can be accomplished only in one way, and that is by such an organism of the government—and, if necessary for the purpose, of the community also—as will, by dividing and distributing the powers of government, give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws or a veto on their execution. It is only by such an organism that the assent of each can be made necessary to put the government in motion, or the power made effectual to arrest its action when put in motion; and it is only by the one or the other that the different interests, orders, classes, or portions into which the community may be divided can be protected, and all conflict and struggle between them prevented—by rendering it impossible

to put or to keep it in action without the concurrent consent of all.

Such an organism as this, combined with the right of suffrage, constitutes, in fact, the elements of constitutional government. The one, by rendering those who make and execute the laws responsible to those on whom they operate, prevents the rulers from oppressing the ruled; and the other, by making it impossible for any one interest or combination of interests, or class, or order, or portion of the community to obtain exclusive control, prevents any one of them from oppressing the other. It is clear that oppression and abuse of power must come, if at all, from the one or the other quarter. From no other can they come. It follows that the two, suffrage and proper organism combined, are sufficient to counteract the tendency of government to oppression and abuse of power and to restrict it to the fulfillment of the great ends for which it is ordained.

In coming to this conclusion I have assumed the organism to be perfect and the different interests, portions, or classes of the community to be sufficiently enlightened to understand its character and object, and to exercise, with due intelligence, the right of suffrage To the extent that either may be defective, to the same extent the government would fall short of fulfilling its end. But this does not impeach the truth of the principles on which it rests In reducing them to proper form, in applying them to practical uses, all elementary principles are liable to difficulties, but they are not, on this account, the less true or valuable. Where the organism is perfect, every interest will be truly and fully represented, and of course the whole community must be so It may be difficult, or even impossible, to make a perfect organism—but, although this be true, yet even when, instead of the sense of each and of all, it takes that of a few great and prominent interests only, it would still, in a great measure, if not altogether, fulfill the end intended by a constitution For in such case it would require so large a portion of the community, compared with the whole, to concur or acquiesce in the action of the government that

number to be plundered would be too few and the number to be aggrandized too many to afford adequate motives to oppression and the abuse of its powers. Indeed, however imperfect the organism, it must have more or less effect in diminishing such tendency.

It may be readily inferred, from what has been stated, that the effect of organism is neither to supersede nor diminish the importance of the right of suffrage, but to aid and perfect it. The object of the latter is to collect the sense of the community. The more fully and perfectly it accomplishes this, the more fully and perfectly it fulfills its end. But the most it can do, of itself, is to collect the sense of the greater number, that is, of the stronger interests or combination of interests, and to assume this to be the sense of the community. It is only when aided by a proper organism that it can collect the sense of the entire community, of each and all its interests—of each, through its appropriate organ, and of the whole through all of them united. This would truly be the sense of the entire community, for whatever diversity each interest might have within itself—as all would have the same interest in reference to the action of the government—the individuals composing each would be fully and truly represented by its own majority or appropriate organ, regarded in reference to the other interests. In brief, every individual of every interest might trust, with confidence, its majority or appropriate organ against that of every other interest.

[The Numerical versus the Concurrent Majority]

It results, from what has been said, that there are two different modes in which the sense of the community may be taken: one, simply by the right of suffrage, unaided; the other, by the right through a proper organism. Each collects the sense of the majority. But one regards numbers only and considers the whole community as a unit having but one common interest throughout, and collects the sense of the greater number of the whole as that of the community. The other,

on the contrary, regards interests as well as numbers—considering the community as made up of different and conflicting interests, as far as the action of the government is concerned—and takes the sense of each through its majority or appropriate organ, and the united sense of all as the sense of the entire community. The former of these I shall call the numerical or absolute majority, and the latter, the concurrent or constitutional majority. I call it the constitutional majority *because it is an essential element in every constitutional* government, be its form what it may So great is the difference, politically speaking, between the two majorities that they cannot be confounded without leading to great and fatal errors; and yet the distinction between them has been so entirely overlooked that when the term "majority" is used in political discussions, it is applied exclusively to designate the numerical—*as if there were no other.* Until this *distinction* is recognized and better understood, there will continue to be great liability to error in properly constructing constitutional governments, especially of the popular form, and of preserving them when properly constructed Until then, the latter will have a strong tendency to slide, first, into the government of the numerical majority, and, finally, into absolute government of some other form. To show that such must be the case, and at the same time to mark more strongly the difference between the two in order to guard against the danger of overlooking it, I propose to consider the subject more at length.

[THE NUMERICAL MAJORITY NOT THE PEOPLE]

The first and leading error which naturally arises from overlooking the distinction referred to is to confound the numerical majority with the people, and this so completely as to regard them as identical. This is a consequence that necessarily results from considering the numerical as the only majority. *All admit that a popular government, or democracy, is the* government of the people, for the terms imply this. A government of the kind would be one which would

the consent of every citizen or member of the community; but as this is impracticable in the opinion of those who regard the numerical as the only majority and who can perceive no other way by which the sense of the people can be taken, they are compelled to adopt this as the only true basis of popular government, in contradistinction to governments of the aristocratical or monarchical form. Being thus constrained, they are, in the next place, forced to regard the numerical majority as in effect the entire people; that is, the greater part as the whole, and the government of the greater part as the government of the whole It is thus the two come to be confounded and a part made identical with the whole. And it is thus also that all the rights, powers, and immunities of the whol people come to be attributed to the numerical majority—and among others, the supreme, sovereign authority of establishin and abolishing governments at pleasure.

This radical error, the consequence of confounding the tw and of regarding the numerical as the only majority, has con [illegible]ed more than any other cause to prevent the formatio of popular constitutional governments and to destroy then even when they have been formed. It leads to the conclusio that in their formation and establishment nothing more i necessary than the right of suffrage and the allotment to eacl division of the community a representation in the governmen in proportion to numbers. If the numerical majority wer really the people, and if to take its sense truly were to tak the sense of the people truly, a government so constitute would be a true and perfect model of a popular constitutiona government; and every departure from it would detract fron its excellence. But as such is not the case, as the numerica majority, instead of being the people, is only a portion o them, such a government, instead of being a true and perfec model of the people's government, that is, a people self-governed, is but the government of a part over a part—the major over the minor portion.

But this misconception of the true elements of constitutional government does not stop here. It leads to others equally false

and fatal, in reference to the best means of preserving and perpetuating them, when, from some fortunate combination of circumstances, they are correctly formed. For they who fall into these errors regard the restrictions which organism imposes on the will of the numerical majority as restrictions on the will of the people and, therefore, as not only useless but wrongful and mischievous. And hence they endeavor to destroy organism under the delusive hope of making government more democratic.

Such are some of the consequences of confounding the two and of regarding the numerical as the only majority. And in this may be found the reason why so few popular governments have been properly constructed and why, of these few, so small a number have proved durable. Such must continue to be the result so long as these errors continue to be prevalent.

[Constitutional Limitations Insufficient to Check the Numerical Majority]

There is another error, of a kindred character, whose influence contributes much to the same results I refer to the prevalent opinion that a written constitution containing suitable restrictions on the powers of government is sufficient, of itself, without the aid of any organism—except such as is necessary to separate its several departments and render them independent of each other—to counteract the tendency of the numerical majority to oppression and the abuse of power.

A written constitution certainly has many and considerable advantages, but it is a great mistake to suppose that the mere insertion of provisions to restrict and limit the powers of the government, without investing those for whose protection they are inserted with the means of enforcing their observance, will be sufficient to prevent the major and dominant party from abusing its powers. Being the party in possession of the government, they will, from the same constitution of man which makes government necessary to protect society, be in favor of the powers granted by the constitution and ‹..

to the restrictions intended to limit them. As the major and dominant parties, they will have no need of these restrictions for their protection. The ballot box, of itself, would be ample protection to them. Needing no other, they would come, in time, to regard these limitations as unnecessary and improper restraints and endeavor to elude them with the view of increasing their power and influence

The minor or weaker party, on the contrary, would take the opposite direction and regard them as essential to their protection against the dominant party. And hence they would endeavor to defend and enlarge the restrictions and to limit and contract the powers. But where there are no means by which they could compel the major party to observe the restrictions, the only resort left them would be a strict construction of the constitution—that is, a constitution which would confine these powers to the narrowest limits which the meaning of the words used in the grant would admit.

To this the major party would oppose a liberal construction —one which would give to the words of the grant the broadest meaning of which they were susceptible. It would then be construction against construction—the one to contract and the other to enlarge the powers of the government to the utmost. But of what possible avail could the strict construction of the minor party be, against the liberal interpretation of the major, when the one would have all the powers of the government to carry its construction into effect and the other be deprived of all means of enforcing its construction? In a contest so unequal, the result would not be doubtful. The party in favor of the restrictions would be overpowered. At first, they might command some respect and do something to stay the march of encroachment, but they would, in the progress of the contest, be regarded as mere abstractionists, and, indeed, deservedly if they should indulge the folly of supposing that the party in possession of the ballot box and the physical force of the country could be successfully resisted by an appeal to reason, truth, justice, or the obligations imposed by the constitution. For when these, of themselves, shall exert

sufficient influence to stay the hand of power, then government will be no longer necessary to protect society, nor constitutions needed to prevent government from abusing its powers. The end of the contest would be the subversion of the constitution, either by the undermining process of construction—where its meaning would admit of possible doubt —or by substituting in practice what is called party-usage in place of its provisions, or, finally, when no other contrivance would subserve the purpose, by openly and boldly setting them aside. By the one or the other, the restrictions would ultimately be annulled and the government be converted into one of unlimited powers.

Nor would the division of government into separate and, as it regards each other, independent departments prevent this result. Such a division may do much to facilitate its operations and to secure to its administration greater caution and deliberation; but as each and all the departments—and, of course, the entire government—would be under the control of the numerical majority, it is too clear to require explanation that a mere distribution of its powers among its agents or representatives could do little or nothing to counteract its tendency to oppression and abuse of power. To effect this, it would be necessary to go one step further and make the several departments the organs of the distinct interests or portions of the community and to clothe each with a negative on the others. But the effect of this would be to change the government from the numerical into the concurrent majority.

[Concurrent Majority Essential to Constitutional Government]

Having now explained the reasons why it is so difficult to form and preserve popular constitutional government so long as the distinction between the two majorities is overlooked and the opinion prevails that a written constitution, with suitable restrictions and a proper division of its powers, is sufficient to counteract the tendency of the numerical majority to tl

abuse of its power—I shall next proceed to explain, more fully, why the concurrent majority is an indispensable element in forming constitutional governments and why the numerical majority, of itself, must, in all cases, make governments absolute.

The necessary consequence of taking the sense of the community by the concurrent majority is, as has been explained, to give to each interest or portion of the community a negative on the others. It is this mutual negative among its various conflicting interests which invests each with the power of protecting itself, and places the rights and safety of each where only they can be securely placed, under its own guardianship. Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others, and without this there can be no constitution. It is this negative power—the power of preventing or arresting the action of the government, be it called by what term it may, veto, interposition, nullification, check, or balance of power—which in fact forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results from the concurrent majority. Without this there can be no negative, and without a negative, no constitution. The assertion is true in reference to all constitutional governments, be their forms what they may. It is, indeed, the *negative* power which makes the constitution, and the *positive* which makes the government. The one is the power of acting, and the other the power of preventing or arresting action. The two, combined, make constitutional governments.

But as there can be no constitution without the negative power, and no negative power without the concurrent majority, it follows necessarily that, where the numerical majority has the sole control of the government, there can be no constitution, as constitution implies limitation or restriction—and, of course, is inconsistent with the idea of sole or exclusive power. And hence the numerical, unmixed with the concurrent, majority necessarily forms, in all cases, absolute government.

It is, indeed, the single or *one power* which excludes the negative and constitutes absolute government, and not the *number* in whom the power is vested. The numerical majority is as truly a *single power*—and excludes the negative as completely as the absolute government of one or of the few. The former is as much the absolute government of the democratic or popular form as the latter of the monarchical or aristocratical. It has, accordingly, in common with them the same tendency to oppression and abuse of power.

Constitutional governments, of whatever form, are, indeed, much more similar to each other in their structure and character than they are, respectively, to the absolute governments, even of their own class. All constitutional governments, of whatever class they may be, take the sense of the community by its parts—each through its appropriate organ—and regard the sense of all its parts as the sense of the whole They all rest on the right of suffrage and the responsibility of rulers, directly or indirectly. On the contrary, all absolute governments, of whatever form, concentrate power in one uncontrolled and irresponsible individual or body whose will is regarded as the sense of the community. And hence the great and broad distinction between governments is not that of the one, the few, or the many, but of the constitutional and the absolute.

From this there results another distinction which, although secondary in its character, very strongly marks the difference between these forms of government. I refer to their respective conservative principle—that is, the principle by which they are upheld and preserved. This principle in constitutional governments is *compromise*; and in absolute governments is *force*, as will be next explained.

It has been already shown that the same constitution of man which leads those who govern to oppress the governed, if not prevented, will, with equal force and certainty, lead the latter to resist oppression when possessed of the means of doing so peaceably and successfully. But absolute governments, of all forms, exclude all other means of resistance to their

than that of force, and, of course, leave no other alternative to the governed but to acquiesce in oppression, however great it may be, or to resort to force to put down the government. But the dread of such a resort must necessarily lead the government to prepare to meet force in order to protect itself, and hence, of necessity, force becomes the conservative principle of all such governments.

On the contrary, the government of the concurrent majority where the organism is perfect, excludes the possibility of oppression by giving to each interest, or portion, or order—where there are established classes—the means of protectin itself by its negative against all measures calculated t advance the peculiar interests of others at its expense. It effect, then, is to cause the different interests, portions, o orders, as the case may be, to desist from attempting to adop any measure calculated to promote the prosperity of one, o more, by sacrificing that of others. and thus to force the to unite in such measures only as would promote the prosperit of all, as the only means to prevent the suspension of th action of the government, and, thereby, to avoid anarchy, th greatest of all evils. It is by means of such authorized an effectual resistance that oppression is prevented and the nece sity of resorting to force superseded in governments of th concurrent majority, and hence compromise, instead of forc becomes their conservative principle

It would, perhaps, be more strictly correct to trace the con servative principle of constitutional governments to the nece sity which compels the different interests, or portions, or orde to compromise—as the only way to promote their respectiv prosperity and to avoid anarchy—rather than to the com promise itself No necessity can be more urgent and imperio than that of avoiding anarchy It is the same as that wh makes government indispensable to preserve society, and not less imperative than that which compels obedience superior force Traced to this source, the voice of a people *uttered under the necessity of avoiding the greatest of cala* ties through the organs of a government so constructed as

suppress the expression of all partial and selfish interests, and to give a full and faithful utterance to the sense of the whole community, in reference to its common welfare—may, without impiety, be called *the voice of God.* To call any other so would be impious.

[TENDENCY TO ABSOLUTISM IN GOVERNMENT]

In stating that force is the conservative principle of absolute, and compromise of constitutional, governments, I have assumed both to be perfect in their kind, but not without bearing in mind that few or none, in fact, have ever been so absolute as not to be under some restraint, and none so perfectly organized as to represent fully and perfectly the voice of the whole community. Such being the case, all must, in practice, depart more or less from the principles by which they are respectively upheld and preserved, and depend more or less for support on force or compromise, as the absolute or the constitutional form predominates in their respective organizations.

Nor, in stating that absolute governments exclude all other means of resistance to its authority than that of force, have I overlooked the case of governments of the numerical majority which form, apparently, an exception It is true that in such governments the minor and subject party, for the time, have the right to oppose and resist the major and dominant party, for the time, through the ballot box, and may turn them out and take their place if they can obtain a majority of votes. But it is no less true that this would be a mere change in the relations of the two parties. The minor and subject party would become the major and dominant party, with the same absolute authority and tendency to abuse power; and the major and dominant party would become the minor and subject party, with the same right to resist through the ballot box and, if successful, again to change relations, with like effect. But such a state of things must necessarily be tempo
The conflict between the two parties must be

than that of force, and, of course, leave no other alternative to the governed but to acquiesce in oppression, however great it may be, or to resort to force to put down the government. But the dread of such a resort must necessarily lead the government to prepare to meet force in order to protect itself, and hence, of necessity, force becomes the conservative principle of all such governments.

On the contrary, the government of the concurrent majority, where the organism is perfect, excludes the possibility of oppression by giving to each interest, or portion, or order—where there are established classes—the means of protecting itself by its negative against all measures calculated to advance the peculiar interests of others at its expense. Its effect, then, is to cause the different interests, portions, or orders, as the case may be, to desist from attempting to adopt any measure calculated to promote the prosperity of one, or more, by sacrificing that of others: and thus to force them to unite in such measures only as would promote the prosperity of all, as the only means to prevent the suspension of the action of the government, and, thereby, to avoid anarchy, the greatest of all evils. It is by means of such authorized and effectual resistance that oppression is prevented and the necessity of resorting to force superseded in governments of the concurrent majority, and hence compromise, instead of force becomes their conservative principle.

It would, perhaps, be more strictly correct to trace the conservative principle of constitutional governments to the necessity which compels the different interests, or portions, or orders to compromise—as the only way to promote their respective prosperity and to avoid anarchy—rather than to the compromise itself. No necessity can be more urgent and imperious than that of avoiding anarchy. It is the same as that which makes government indispensable to preserve society, and is not less imperative than that which compels obedience to superior force. Traced to this source, the voice of a people—uttered under the necessity of avoiding the greatest of calamities through the organs of a government so constructed as t

A broader position may, indeed, be taken; viz., that there is a tendency in constitutional governments of every form to degenerate into their respective absolute forms, and in all absolute governments into that of the monarchical form. But the tendency is much stronger in constitutional governments of the democratic form to degenerate into their respective absolute forms than in either of the others because, among other reasons, the distinction between the constitutional and absolute forms of aristocratical and monarchical governments is far more strongly marked than in democratic governments. The effect of this is to make the different orders or classes in an aristocracy or monarchy far more jealous and watchful of encroachment on their respective rights, and more resolute and persevering in resisting attempts to concentrate power in any one class or order. On the contrary, the line between the two forms, in popular governments, is so imperfectly understood that honest and sincere friends of the constitutional form not unfrequently, instead of jealously watching and arresting their tendency to degenerate into their absolute forms, not only regard it with approbation but employ all their powers to add to its strength and to increase its impetus, in the vain hope of making the government more perfect and popular. The numerical majority, perhaps, should usually be one of the elements of a constitutional democracy; but to make it the sole element, in order to perfect the constitution and make the government more popular, is one of the greatest and most fatal of political errors

[THE CONCURRENT MAJORITY AND UNIVERSAL SUFFRAGE]

Among the other advantages which governments of the concurrent have over those of the numerical majority—and which strongly illustrates their more popular character—is that they admit, with safety, a much greater extension of the right of suffrage. It may be safely extended in such governments to universal suffrage—that is, to every male of mature age, with few ordinary exceptions; but it be so far extended in those of the numerical majority

strife and struggle between them for ascendency is prevented, and thereby not only every feeling calculated to weaken the attachment to the whole is suppressed, but the individual and the social feelings are made to unite in one common devotion to country. Each sees and feels that it can best promote its own prosperity by conciliating the good will and promoting the prosperity of the others. And hence there will be diffused throughout the whole community kind feelings between its different portions and, instead of antipathy, a rivalry amongst them to promote the interests of each other, as far as this can be done consistently with the interest of all. Under the combined influence of these causes, the interests of each would be merged in the common interests of the whole; and thus the community would become a unit by becoming the common center of attachment of all its parts. And hence, instead of faction, strife, and struggle for party ascendency, there would be patriotism, nationality, harmony, and a struggle only for supremacy in promoting the common good of the whole.

But the difference in their operation, in this respect, would not end here. Its effects would be as great in a moral as I have attempted to show they would be in a political point of view. Indeed, public and private morals are so nearly allied that it would be difficult for it to be otherwise. That which corrupts and debases the community politically must also corrupt and debase it morally. The same cause which in governments of the numerical majority gives to party attachments and antipathies such force as to place party triumph and ascendency above the safety and prosperity of the community will just as certainly give them sufficient force to overpower all regard for truth, justice, sincerity, and moral obligations of every description. It is, accordingly, found that in the violent strifes between parties for the high and glittering prize of governmental honors and emoluments—falsehood, injustice, fraud, artifice, slander, and breach of faith are freely resorted to as legitimate weapons, followed by all their corrupting and debasing influences.

In the government of the concurrent majority, on the

contrary, the same cause which prevents such strife as the means of obtaining power, and which makes it the interest of each portion to conciliate and promote the interests of the others, would exert a powerful influence toward purifying and elevating the character of the government and the people, morally as well as politically. The means of acquiring power —or, more correctly, influence—in such governments would be the reverse. Instead of the vices by which it is acquired in that of the numerical majority, the opposite virtues—truth, justice, integrity, fidelity, and all others by which respect and confidence are inspired—would be the most certain and effectual means of acquiring it.

Nor would the good effects resulting thence be confined to those who take an active part in political affairs. They would extend to the whole community. For of all the causes which contribute to form the character of a people, those by which power, influence, and standing in the government are more certainly and readily obtained are by far the most powerful. These are the objects most eagerly sought of all others by the talented and aspiring; and the possession of which commands the greatest respect and admiration But just in proportion to this respect and admiration will be their appreciation by those whose energy, intellect, and position in society are calculated to exert the greatest influence in forming the character of a people. If knowledge, wisdom, patriotism, and virtue be the most certain means of acquiring them, they will be most highly appreciated and assiduously cultivated; and this would cause them to become prominent traits in the character of the people. But if, on the contrary, cunning, fraud, treachery, and party devotion be the most certain, they will be the most highly prized and become marked features in their character. So powerful, indeed, is the operation of the concurrent majority in this respect that, if it were possible for a corrupt and degenerate community to establish and maintain a well-organized government of the kind, it would of itself purify and regenerate them, while, on the other h[illegible] government based wholly on the numerical m[illegible]

most adverse circumstances, while, on the other hand, another may be so sunk in ignorance and vice as to be incapable of forming a conception of liberty or of living, even when most favored by circumstances, under any other than an absolute and despotic government.

The principle in all communities, according to these numerous and various causes, assigns to power and liberty their proper spheres. To allow to liberty, in any case, a sphere of action more extended than this assigns would lead to anarchy, and this, probably, in the end to a contraction instead of an enlargement of its sphere. Liberty, then, when forced on a people unfit for it, would, instead of a blessing, be a curse as it would in its reaction lead directly to anarchy—the greatest of all curses. No people, indeed, can long enjoy more liberty than that to which their situation and advanced intelligence and morals fairly entitle them. If more than this be allowed, they must soon fall into confusion and disorder—to be followed, if not by anarchy and despotism, by a change to a form of government more simple and absolute, and therefore better suited to their condition. And hence, although it may be true that a people may not have as much liberty as they are fairly entitled to and are capable of enjoying, yet the reverse is unquestionably true—that no people can long possess more than they are fairly entitled to.

Liberty, indeed, though among the greatest of blessings, is not so great as that of protection, inasmuch as the end of the former is the progress and improvement of the race, while that of the latter is its preservation and perpetuation. And hence, when the two come into conflict, liberty must, and ever ought, to yield to protection, as the existence of the race is of greater moment than its improvement.

It follows, from what has been stated, that it is a great and dangerous error to suppose that all people are equally entitled to liberty. It is a reward to be earned, not a blessing to be gratuitously lavished on all alike—a reward reserved for the intelligent, the patriotic, the virtuous and deserving, and not a boon to be bestowed on a people too ignorant, degraded,

and vicious to be capable either of appreciating or of enjoying it. Nor is it any disparagement to liberty that such is and ought to be the case. On the contrary, its greatest praise—its proudest distinction is that an all-wise Providence has reserved it as the noblest and highest reward for the development of our faculties, moral and intellectual A reward more appropriate than liberty could not be conferred on the deserving, nor a punishment inflicted on the undeserving more just than to be subject to lawless and despotic rule. This dispensation seems to be the result of some fixed law, and every effort to disturb or defeat it, by attempting to elevate a people in the scale of liberty above the point to which they are entitled to rise, must ever prove abortive and end in disappointment. The progress of a people rising from a lower to a higher point in the scale of liberty is necessarily slow, and by attempting to precipitate, we either retard or permanently defeat it.

[Liberty and Equality]

There is another error, not less great and dangerous, usually associated with the one which has just been considered. I refer to the opinion that liberty and equality are so intimately united that liberty cannot be perfect without perfect equality.

That they are united to a certain extent, and that equality of citizens, in the eyes of the law, is essential to liberty in a popular government is conceded But to go further and make equality of *condition* essential to liberty would be to destroy both liberty and progress The reason is that inequality of condition, while it is a necessary consequence of liberty, is at the same time indispensable to progress In order to understand why this is so, it is necessary to bear in mind that the mainspring to progress is the desire of individuals to better their condition, and that the strongest impulse which can be given to it is to leave individuals free to exert themselves in the manner they may deem best for that purpose, as far at least as it can be done consistently with the ends for which government is ordained, and to secure to all the fruits of their

and secure the bounds of liberty because it is better suited to prevent government from passing beyond its proper limits and to restrict it to its primary end—the protection of the community. But in doing this, it leaves necessarily all beyond it open and free to individual exertions, and thus enlarges and secures the sphere of liberty to the greatest extent which the condition of the community will admit, as has been explained. The tendency of government to pass beyond its proper limits is what exposes liberty to danger and renders it insecure; and it is the strong counteraction of governments of the concurrent majority to this tendency which makes them so favorable to liberty. On the contrary, those of the numerical, instead of opposing and counteracting this tendency, add to it increased strength, in consequence of the violent party struggles incident to them, as has been fully explained And hence their encroachments on liberty and the danger to which it is exposed under such governments.

So great, indeed, is the difference between the two in this respect that liberty is little more than a name under all governments of the absolute form, including that of the numerical majority, and can only have a secure and durable existence under those of the concurrent or constitutional form. The latter, by giving to each portion of the community which may be unequally affected by its action a negative on the others, prevents all partial or local legislation and restricts its action to such measures as are designed for the protection and the good of the whole. In doing this, it secures, at the same time, the rights and liberty of the people regarded individually, as each portion consists of those who, whatever may be the diversity of interests among themselves, have the same interest in reference to the action of the government.

Such being the case, the interest of each individual may be safely confided to the majority, or voice of his portion, against that of all others, and, of course, the government itself. It is only through an organism which vests each with a negative, in some one form or another, that those who have like interests in preventing the government from passing beyond its proper

sphere and encroaching on the rights and liberty of individuals can cooperate peaceably and effectually in resisting the encroachments of power and thereby preserve their rights and liberty. Individual resistance is too feeble and the difficulty of concert and cooperation too great, unaided by such an organism, to oppose successfully the organized power of government with all the means of the community at its disposal, especially in populous countries of great extent where concert and cooperation are almost impossible. Even when the oppression of the government comes to be too great to be borne and force is resorted to in order to overthrow it, the result is rarely ever followed by the establishment of liberty. The force sufficient to overthrow an oppressive government is usually sufficient to establish one equally or more oppressive in its place. And hence, in no governments, except those that rest on the principle of the concurrent or constitutional majority, can the people guard their liberty against power; and hence also, when lost, the great difficulty and uncertainty of regaining it by force

It may be further affirmed that, being more favorable to the enlargement and security of liberty, governments of the concurrent must necessarily be more favorable to progress, development, improvement, and civilization—and, of course, to the increase of power which results from and depends on these—than those of the numerical majority That it is liberty which gives to them their greatest impulse has already been shown, and it now remains to show that these, in turn, contribute greatly to the increase of power.

In the earlier stages of society, numbers and individual prowess constituted the principal elements of power. In a more advanced stage, when communities had passed from the barbarous to the civilized state, discipline, strategy, weapons of increased power, and money—as the means of meeting increased expense—became additional and important elements. In this stage the effects of progress and improvement on the increase of power began to be disclosed, but still numbers and personal prowess were sufficient, for a long period, to :

barbarous nations to contend successfully with the civilized and, in the end, to overpower them, as the pages of history abundantly testify. But a more advanced progress, with its numerous inventions and improvements, has furnished new and far more powerful and destructive implements of offense and defense, and greatly increased the intelligence and wealth necessary to engage the skill and meet the increased expense required for their construction and application to purposes of war. The discovery of gunpowder and the use of steam as an impelling force, and their application to military purposes have forever settled the question of ascendency between civil ized and barbarous communities in favor of the former Indeed, these, with other improvements belonging to th present state of progress, have given to communities the mos advanced a superiority over those the least so, almost as grea as that of the latter over the brute creation. And among th civilized, the same causes have decided the question of superi ority, where other circumstances are nearly equal, in favor o those whose governments have given the greatest impulse t development, progress, and improvement, that is, to thos whose liberty is the largest and best secured. Among thes England and the United States afford striking examples, no only of the effects of liberty in increasing power, but of th more perfect adaptation of governments founded on the prin ciple of the concurrent or constitutional majority to enlarg and secure liberty. They are both governments of this descrip tion, as will be shown hereafter.

But in estimating the power of a community, moral as we as physical causes must be taken into the calculation; and i estimating the effects of liberty on power, it must not b overlooked that it is, in itself, an important agent in augment ing the force of moral as well as of physical power. It bestow on a people elevation, self-reliance, energy, and enthusiasm and these combined give to physical power a vastly augmente and almost irresistible impetus.

These, however, are not the only elements of moral power There are others, and among them harmony, unanimity, devo

tion to country, and a disposition to elevate to places of trust and power those who are distinguished for wisdom and experience. These, when the occasion requires it, will, without compulsion and from their very nature, unite and put forth the entire force of the community in the most efficient manner, without hazard to its institutions or its liberty.

All these causes combined give to a community its maximum of power. Either of them, without the other, would leave it comparatively feeble. But it cannot be necessary, after what has been stated, to enter into any further explanation or argument in order to establish the superiority of governments of the concurrent majority over the numerical in developing the great elements of moral power So vast is this superiority that the one, by its operation, necessarily leads to their development, while the other as necessarily prevents it—as has been fully shown.

[Objections Answered]

Such are the many and striking advantages of the concurrent over the numerical majority. Against the former but two objections can be made. The one is that it is difficult of construction, which has already been sufficiently noticed; and the other that it would be impracticable to obtain the concurrence of conflicting interests where they were numerous and diversified, or, if not, that the process for this purpose would be too tardy to meet with sufficient promptness the many and dangerous emergencies to which all communities are exposed. This objection is plausible and deserves a fuller notice than it has yet received

The diversity of opinion is usually so great on almost all questions of policy that it is not surprising, on a slight view of the subject, it should be thought impracticable to bring the various conflicting interests of a community to unite on any one line of policy, or that a government founded on such a principle would be too slow in its movements and too in its foundation to succeed in practice. But plausible

may seem at the first glance, a more deliberate view will show that this opinion is erroneous. It is true that, when there is no urgent necessity, it is difficult to bring those who differ to agree on any one line of action Each will naturally insist on taking the course he may think best, and, from pride of opinion, will be unwilling to yield to others. But the case is different when there is an urgent necessity to unite on some common course of action, as reason and experience both prove. When something *must* be done—and when it can be done *only* by the united consent of all—the necessity of the case will force to a compromise, be the case of that necessity what it may. On all questions of acting, necessity, where it exists, is the overruling motive, and where, in such cases, compromise among the parties is an indispensable condition to acting, it exerts an overruling influence in predisposing them to acquiesce in some one opinion or course of action. Experience furnishes many examples in confirmation of this important truth. Among these, the trial by jury is the most familiar and on that account will be selected for illustration.

In these, twelve individuals, selected without discrimination, must unanimously concur in opinion—under the obligations of an oath to find a true verdict according to law and evidence, and this, too, not unfrequently under such great difficulty and doubt that the ablest and most experienced judges and advocates differ in opinion after careful examination. And yet, as impracticable as this mode of trial would seem to a superficial observer, it is found in practice not only to succeed, but to be the safest, the wisest, and the best that human ingenuity has ever devised. When closely investigated, the cause will be found in the necessity under which the jury is placed—to agree unanimously in order to find a verdict. This necessity acts as the predisposing cause of concurrence in some common opinion, and with such efficacy that a jury rarely fails to find a verdict.

Under its potent influence, the jurors take their seats with the disposition to give a fair and impartial hearing to the arguments on both sides—meet together in the juryroom, not as disputants, but calmly to hear the opinions of each other and to compare and weigh the arguments on which they are

founded, and finally to adopt that which, on the whole, is thought to be true. Under the influence of this *disposition to harmonize* one after another falls into the same opinion until unanimity is obtained. Hence its practicability—and hence also its peculiar excellence. Nothing, indeed, can be more favorable to the success of truth and justice than this predisposing influence caused by the necessity of being unanimous. It is so much so as to compensate for the defect of legal knowledge and a high degree of intelligence on the part of those who usually compose juries. If the necessity of unanimity were dispensed with and the finding of a jury made to depend on a bare majority, jury trial, instead of being one of the greatest improvements in the judicial department of government, would be one of the greatest evils that could be inflicted on the community. It would be, in such case, the conduit through which all the factious feelings of the day would enter and contaminate justice at its source.

[The Importance of Compromise]

But the same cause would act with still greater force in predisposing the various interests of the community to agree in a well-organized government founded on the concurrent majority. The necessity for unanimity, in order to keep the government in motion, would be far more urgent and would act under circumstances still more favorable to secure it. It would be superfluous, after what has been stated, to add other reasons in order to show that no necessity, physical or moral, can be more imperious than that of government. It is so much so that, to suspend its action altogether, even for an inconsiderable period, would subject the community to convulsions and anarchy. But in governments of the concurrent majority such fatal consequences can only be avoided by the unanimous concurrence or acquiesence of the various portions of the community. Such is the imperious character of the necessity which impels to compromise under gc this description.

But to have a just conception of the overpowerin

it would exert, the circumstances under which it would act must be taken into consideration. These will be found, on comparison, much more favorable than those under which juries act. In the latter case there is nothing besides the necessity of unanimity in finding a verdict, and the inconvenience to which they might be subjected in the event of division, to induce juries to agree except the love of truth and justice, which, when not counteracted by some improper motive or bias, more or less influences all, not excepting the most depraved. In the case of governments of the concurrent majority, there is, besides these, the love of country, than which, if not counteracted by the unequal and oppressive action of government or other causes, few motives exert a greater sway. It comprehends, indeed, within itself a large portion both of our individual and social feelings; and hence its almost boundless control when left free to act. But the government of the concurrent majority leaves it free by preventing abuse and oppression, and with them the whole train of feelings and passions which lead to discord and conflict between different portions of the community. Impelled by the imperious necessity of preventing the suspension of the action of government, with the fatal consequences to which it would lead, and by the strong additional impulse derived from an ardent love of country, each portion would regard the sacrifice it might have to make by yielding its peculiar interest to secure the common interest and safety of all, including its own, as nothing compared to the evils that would be inflicted on all, including its own, by pertinaciously adhering to a different line of action. So powerful, indeed, would be the motives for concurring and, under such circumstances, so weak would be those opposed to it, the wonder would be, not that there should, but that there should not be a compromise.

But to form a juster estimate of the full force of this impulse to compromise, there must be added that in governments of the concurrent majority each portion, in order to advance its own peculiar interests, would have to conciliate all others by showing a disposition to advance theirs; and for this purpose

each would select those to represent it whose wisdom, patriotism, and weight of character would command the confidence of the others. Under its influence—and with representatives so well qualified to accomplish the object for which they were selected—the prevailing desire would be to promote the common interests of the whole; and hence the competition would be, not which should yield the least to promote the common good, but which should yield the most. It is thus that concession would cease to be considered a sacrifice—would become a free-will offering on the altar of the country and lose the name of compromise And herein is to be found the feature which distinguishes governments of the concurrent majority so strikingly from those of the numerical. In the latter, each faction, in the struggle to obtain the control of the government, elevates to power the designing, the artful, and unscrupulous who in their devotion to party—instead of aiming at the good of the whole—aim exclusively at securing the ascendency of party.

When traced to its source, this difference will be found to originate in the fact that in governments of the concurrent majority individual feelings are, from its organism, necessarily enlisted on the side of the social, and made to unite with them in promoting the interests of the whole as the best way of promoting the separate interests of each, while in those of the numerical majority the social are necessarily enlisted on the side of the individual and made to contribute to the interest of parties regardless of that of the whole. To effect the former—to enlist the individual on the side of the social feelings to promote the good of the whole—is the greatest possible achievement of the science of government, while to enlist the social on the side of the individual to promote the interest of parties at the expense of the good of the whole is the greatest blunder which ignorance can possibly commit.

To this also may be referred the greater solidity of foundation on which governments of the concurrent majority repose. Both ultimately rest on necessity, for force, by which th the numerical majority are upheld, is only acquiesced in

necessity—in a necessity not more imperious, however, than that which compels the different portions in governments of the concurrent majority to acquiesce in compromise. There is, however, a great difference in the motive, the feeling, the aim which characterize the act in the two cases. In the one, it is done with that reluctance and hostility ever incident to enforced submission to what is regarded as injustice and oppression, accompanied by the desire and purpose to seize on the first favorable opportunity for resistance; but in the other, willingly and cheerfully, under the impulse of an exalted patriotism, impelling all to acquiesce in whatever the common good requires

[The Polish Constitution]

It is, then, a great error to suppose that the government of the concurrent majority is impracticable or that it rests on a feeble foundation. History furnishes many examples of such governments, and among them one in which the principle was carried to an extreme that would be thought impracticable had it never existed. I refer to that of Poland In this it was carried to such an extreme that in the election of her king the concurrence or acquiescence of every individual of the nobles and gentry present, in an assembly numbering usually from one hundred and fifty to two hundred thousand, was required to make a choice, thus giving to each individual a veto on his election. So, likewise, every member of her Diet (the supreme legislative body) consisting of the king, the senate, bishops, and deputies of the nobility and gentry of the palatinates possessed a veto on all its proceedings—thus making a unanimous vote necessary to enact a law or to adopt any measure whatever. And, as if to carry the principle to the utmost extent, the veto of a single member not only defeated the particular bill or measure in question, but prevented all others passed during the session from taking effect. Further the principle could not be carried. It in fact made every individual of the nobility and gentry a distinct element in the

organism—or, to vary the expression, made him an *Estate of the Kingdom*. And yet this government lasted in this form more than two centuries, embracing the period of Poland's greatest power and renown. Twice during its existence she protected Christendom, when in great danger, by defeating the Turks under the walls of Vienna and permanently arresting thereby the tide of their conquests westward.

It is true, her government was finally subverted and the people subjugated in consequence of the extreme to which the principle was carried, not, however, because of its tendency to dissolution *from weakness*, but from the facility it afforded to powerful and unscrupulous neighbors to control by their intrigues the election of her kings But the fact that a government in which the principle was carried to the utmost extreme, not only existed, but existed for so long a period in great power and splendor, is proof conclusive both of its practicability and its compatibility with the power and permanency of government.

[The Iroquois Confederacy]

Another example, not so striking indeed, but yet deserving notice is furnished by the government of a portion of the aborigines of our own country I refer to the Confederacy of the Six Nations who inhabited what now is called the western portion of the State of New York One chief delegate, chosen by each nation—associated with six others of his own selection, and making in all forty-two members—constituted their federal or general government. When met, they formed the council of the union and discussed and decided all questions relating to the common welfare. As in the Polish Diet, each member possessed a veto on its decision, so that nothing could be done without the united consent of all. But this, instead of making the Confederacy weak or impracticable, had the opposite effect. It secured harmony in council and action, and with them a great increase of power. The Six Nations consequence, became the most powerful of all the In "

within the limits of our country. They carried their conques and authority far beyond the country they originally occupied

I pass by, for the present, the most distinguished of all thes examples—the Roman Republic, where the veto, or negativ power, was carried, not indeed to the same extreme as in th Polish government, but very far and with great increase o power and stability, as I shall show more at large hereafter

[The Free Press an Organ of Public Opinion]

It may be thought, and doubtless many have supposed, tha the defects inherent in the government of the numerica majority may be remedied by a free press, as the organ c public opinion—especially in the more advanced stage c society—so as to supersede the necessity of the concurrer majority to counteract its tendency to oppression and abus of power. It is not my aim to detract from the importanc of the press, nor to underestimate the great power and influ ence which it has given to public opinion. On the contrar I admit these are so great as to entitle it to be considered new and important political element. Its influence is at th present day on the increase, and it is highly probable that may, in combination with the causes which have contribute to raise it to its present importance, effect, in time, gre changes—social and political. But however important i present influence may be or may hereafter become, or howev great and beneficial the changes to which it may ultimatel lead, it can never counteract the tendency of the numeric majority to the abuse of power, nor supersede the necessity c the concurrent as an essential element in the formation c constitutional governments These it cannot effect for tw reasons, either of which is conclusive.

The one is that it cannot change that principle of our natu which makes constitutions necessary to prevent governmen from abusing its powers, and government necessary to prote and perfect society.

Constituting, as this principle does, an essential part of our nature, no increase of knowledge and intelligence, no enlargement of our sympathetic feelings, no influence of education, or modification of the condition of society can change it. But so long as it shall continue to be an essential part of our nature, so long will government be necessary; and so long as this continues to be necessary, so long will constitutions also be necessary to counteract its tendency to the abuse of power, and so long must the concurrent majority remain an essential element in the formation of constitutions The press may do much—by giving impulse to the progress of knowledge and intelligence—to aid the cause of education and to bring about salutary changes in the condition of society. These, in turn, may do much to explode political errors, to teach how governments should be constructed in order to fulfill their ends, and by what means they can be best preserved when so constructed. They may also do much to enlarge the social and to restrain the individual feelings, and thereby to bring about a state of things when far less power will be required by governments to guard against internal disorder and violence and external danger, and when, of course, the sphere of power may be greatly contracted and that of liberty proportionally enlarged. But all this would not change the nature of man, nor supersede the necessity of government. For so long as government exists, the possession of its control, as the means of directing its action and dispensing its honors and emoluments, will be an object of desire While this continues to be the case, it must in governments of the numerical majority lead to party struggles and, as has been shown, to all the consequences which necessarily follow in their train, and against which the only remedy is the concurrent majority

The other reason is to be found in the nature of the influence which the press politically exercises.

It is similar, in most respects, to that of suffrage. They are, indeed, both organs of public opinion The principal difference is that the one has much more agency in forming pub-

opinion, while the other gives a more authentic and authoritative expression to it. Regarded in either light, the press cannot, of itself, guard any more against the abuse of power than suffrage, and for the same reason.

If what is called public opinion were always the opinion of the whole community, the press would, as its organ, be an effective guard against the abuse of power and supersede the necessity of the concurrent majority, just as the right of suffrage would do where the community, in reference to the action of government, had but one interest. But such is not the case. On the contrary, what is called public opinion, instead of being the united opinion of the whole community, is usually nothing more than the opinion or voice of the strongest interest or combination of interests, and not unfrequently of a small but energetic and active portion of the whole Public opinion, in relation to government and its policy, is as much divided and diversified as are the interests of the community; and the press, instead of being the organ of the whole, is usually but the organ of these various and diversified interests respectively, or rather of the parties growing out of them. It is used by them as the means of controlling public opinion and of so molding it as to promote their peculiar interests and to aid in carrying on the warfare of party. But as the organ and instrument of parties, in governments of the numerical majority, it is as incompetent as suffrage itself to counteract the tendency to oppression and abuse of power, and can no more than that supersede the necessity of the concurrent majority On the contrary, as the instrument of party warfare, it contributes greatly to increase party excitement and the violence and virulence of party struggles, and, in the same degree, the tendency to oppression and abuse of power. Instead, then, of superseding the necessity of the concurrent majority, it increases it by increasing the violence and force of party feelings—in like manner as party caucuses and party machinery; of the latter of which, indeed, it forms an important part.

[THE STRUCTURE OF CONSTITUTIONAL AND ABSOLUTE GOVERNMENTS]

In one respect, and only one, the government of the numerical majority has the advantage over that of the concurrent if, indeed, it can be called an advantage I refer to its simplicity and facility of construction. It is simple indeed, wielded, as it is, by a single power—the will of the greater number—and very easy of construction. For this purpose nothing more is necessary than universal suffrage and the regulation of the manner of voting so as to give to the greater number the supreme control over every department of government.

But whatever advantages simplicity and facility of construction may give it, the other forms of absolute government possess them in a still higher degree The construction of the government of the numerical majority, simple as it is, requires some preliminary measures and arrangements, while the others, especially the monarchical, will, in its absence or where it proves incompetent, force themselves on the community. And hence, among other reasons, the tendency of all governments is from the more complex and difficult of construction to the more simple and easily constructed, and, finally, to absolute monarchy as the most simple of all. Complexity and difficulty of construction, as far as they form objections, apply not only to governments of the concurrent majority of the popular form but to constitutional governments of every form. The least complex and the most easily constructed of them are much more complex and difficult of construction than any one of the absolute forms Indeed, so great has been this difficulty that their construction has been the result, not so much of wisdom and patriotism, as of favorable combinations of circumstances. They have for the most part grown out of the struggles between conflicting interests which, from some fortunate turn, have ended in a compromise by which both parties have been admitted, in some one way or another, to have a separate and distinct voice in the government. Where this has

not been the case, they have been the product of fortunate circumstances acting in conjunction with some pressing dange which forced their adoption as the only means by which i could be avoided. It would seem that it has exceeded humar sagacity deliberately to plan and construct constitutiona governments, with a full knowledge of the principles on whicl they were formed, or to reduce them to practice without th pressure of some immediate and urgent necessity. Nor is i surprising that such should be the case, for it would seen almost impossible for any man, or body of men, to be s profoundly and thoroughly acquainted with the people of an community which has made any considerable progress in civi lization and wealth, with all the diversified interests eve accompanying them, as to be able to organize constitutions governments suited to their condition. But even were thi possible, it would be difficult to find any community suffi ciently enlightened and patriotic to adopt such a governmer without the compulsion of some pressing necessity A consti tution, to succeed, must spring from the bosom of th community and be adapted to the intelligence and characte of the people and all the multifarious relations, internal an external, which distinguish one people from another If it do not, it will prove in practice to be not a constitution, but cumbrous and useless machine which must be speedily super seded and laid aside for some other more simple and bette suited to their condition.

It would thus seem almost necessary that government should commence in some one of the simple and absolut forms which, however well suited to the community in it earlier stages, must in its progress lead to oppression and abus of power and finally to an appeal to force—to be succeede by a military despotism—unless the conflicts to which it lead should be fortunately adjusted by a compromise which wi give to the respective parties a participation in the control o the government, and thereby lay the foundation of a constitu tional government to be afterwards matured and perfected Such governments have been, emphatically, the product o

circumstances. And hence the difficulty of one people imitating the government of another. And hence also the importance of terminating all civil conflicts by a compromise which shall prevent either party from obtaining complete control and thus subjecting the other.

[POPULAR GOVERNMENT]

Of the different forms of constitutional governments, the popular is the most complex and difficult of construction. It is, indeed, so difficult that ours, it is believed, may with truth be said to be the only one of a purely popular character, of any considerable importance, that ever existed. The cause is to be found in the fact that in the other two forms society is arranged in artificial orders or classes. Where these exist the line of distinction between them is so strongly marked as to throw into shade or, otherwise, to absorb all interests which are foreign to them respectively Hence in an aristocracy all interests are, politically, reduced to two—the nobles and the people; and in a monarchy with a nobility into three—the monarch, the nobles, and the people. In either case they are so few that the sense of each may be taken separately through its appropriate organ so as to give to each a concurrent voice, and a negative on the other, through the usual departments of the government, without making it too complex or too tardy in its movements to perform with promptness and energy all the necessary functions of government.

The case is different in constitutional governments of the popular form. In consequence of the absence of these artificial distinctions the various natural interests, resulting from diversity of pursuits, condition, situation, and character of different portions of the people—and from the action of the government itself—rise into prominence and struggle to obtain the ascendency They will, it is true, in governments of the numerical majority ultimately coalesce and form two great parties, but not so closely as to lose entirely separate character and existence. These they v

ready to reassume when the objects for which they coalesced are accomplished. To overcome the difficulties occasioned by so great a diversity of interests, an organism far more complex is necessary.

Another obstacle, difficult to be overcome, opposes the formation of popular constitutional governments. It is much more difficult to terminate the struggles between conflicting interests by compromise in absolute popular governments than in an aristocracy or monarchy.

[ARISTOCRACY]

In an aristocracy the object of the people in the ordinary struggle between them and the nobles is not, at least in its early stages, to overthrow the nobility and revolutionize the government, but to participate in its powers. Notwithstanding the oppression to which they may be subjected under this form of government, the people commonly feel no small degree of respect for the descendants of a long line of distinguished ancestors, and do not usually aspire to more—in opposing the authority of the nobles—than to obtain such a participation in the powers of the government as will enable them to correct its abuses and to lighten their burdens. Among the nobility, on the other hand, it sometimes happens that there are individuals of great influence with both sides who have the good sense and patriotism to interpose in order to effect a compromise by yielding to the reasonable demands of the people, and thereby to avoid the hazard of a final and decisive appeal to force. It is thus by a judicious and timely compromise the people in such governments may be raised to a participation in the administration sufficient for their protection without the loss of authority on the part of the nobles.

[MONARCHY]

In the case of a monarchy, the process is somewhat different. Where it is a military despotism, the people rarely have the spirit or intelligence to attempt resistance, or, if otherwise

assimilated than either of the other two to military power, on which all absolute governments depend for support And hence also the tendency of the others and of constitutional governments which have been so badly constructed or become so disorganized as to require force to support them—to pass into military despotism, that is, into monarchy in its most absolute and simple form. And hence again the fact that revolutions in absolute monarchies end almost invariably in a change of dynasty, and not of the forms of the government, as is almost universally the case in the other systems

But there are, besides these, other causes of a higher character which contribute much to make monarchies the most prevalent and usually the most durable governments. Among them the leading one is, they are the most susceptible of improvement—that is, they can be more easily and readily modified so as to prevent, to a limited extent, oppression and abuse of power without assuming the constitutional form in its strict sense. It slides, almost naturally, into one of the most important modifications I refer to hereditary descent When this becomes well defined and firmly established, the community or kingdom comes to be regarded by the sovereign as the hereditary possession of his family—a circumstance which tends strongly to identify his interests with those of his subjects and thereby to mitigate the rigor of the government. It gives, besides, great additional security to his person and

the case and a powerful body of hereditary nobles surround the sovereign, they oppose a strong resistance to his authority, and he to theirs—tending to the advantage and security of the people. Even when they do not succeed in obtaining a participation in the powers of the government, they usually acquire sufficient weight to be felt and respected From this state of things such governments usually, in time, settle down on some fixed rules of action which the sovereign is compelled to respect and by which increased protection and security are acquired by all. It was thus the enlightened monarchies of Europe were formed under which the people of that portion of the globe have made such great advances in power, intelligence, and civilization.

To these may be added the greater capacity which governments of the monarchical form have exhibited to hold under subjection a large extent of territory and a numerous population, and which has made them more powerful than others of a different form to the extent that these constitute an element of power. All these causes combined have given such great and decisive advantages as to enable them heretofore to absorb, in the progress of events, the few governments which have from time to time assumed different forms—not excepting even the mighty Roman Republic, which, after attaining the highest point of power, passed, seemingly under the operation of irresistible causes, into a military despotism I say heretofore—for it remains to be seen whether they will continue to retain their advantages in these respects over the others under the great and growing influence of public opinion and the new and imposing form which popular government has assumed with us.

These have already effected great changes and will probably effect still greater—adverse to the monarchical form; but as yet these changes have tended rather to the absolute than to the constitutional form of popular government—for reasons which have been explained. If this tendency should continue permanently in the same direction, the monarchical form m still retain its advantages and continue to be the most

assimilated than either of the other two to military power, on which all absolute governments depend for support. And hence also the tendency of the others and of constitutional governments which have been so badly constructed or become so disorganized as to require force to support them—to pass into military despotism, that is, into monarchy in its most absolute and simple form And hence again the fact that revolutions in absolute monarchies end almost invariably in a change of dynasty, and not of the forms of the government, as is almost universally the case in the other systems.

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and which have guided their policy before those which the changes are calculated to form and establish are fairly developed and understood. The interval between the decay of the old and the formation and establishment of the new constitutes a period of transition which must always necessarily be one of uncertainty, confusion, error, and wild and fierce fanaticism.

The governments of the more advanced and civilized portions of the world are now in the midst of this period. It has proved and will continue to prove a severe trial to existing political institutions of every form. Those governments which have not the sagacity to perceive what is truly public opinion —to distinguish between it and the mere clamor of faction, or shouts of fanaticism—and the good sense and firmness to yield timely and cautiously to the claims of the one, and to resist promptly and decidedly the demands of the other, are doomed to fall. Few will be able successfully to pass through this period of transition; and these not without shocks and modifications more or less considerable. It will endure until the governing and the governed shall better understand the ends for which government is ordained, and the form best adapted to accomplish them under all the circumstances in which communities may be respectively placed

I shall, in conclusion, proceed to exemplify the elementary principles which have been established by giving a brief account of the origin and character of the governments of Rome and Great Britain, the two most remarkable and perfect of their respective forms of constitutional governments. The object is to show how these principles were applied in the more simple forms of such governments, preparatory to an exposition of the mode in which they have been applied in our own more complex system It will appear that in each the principles are the same, and that the difference in their application resulted from the different situation and social condition of the respective communities. They were modified in each so as to conform to these; and hence their remarkable success. They were applied to communities in which hereditary had long prevailed. Their respective constitutions

tribunes as the protectors of their order, and made their persons sacred. The number was afterwards increased to ten, and their election by centuries changed to election by tribes —a mode by which the plebeians secured a decided preponderance

Such was the origin of the tribunate which in process of time opened all the honors of the government to the plebeians. They acquired the right, not only of vetoing the passage of all laws, but also their execution, and thus obtained through their tribunes a negative on the entire action of the government without divesting the patricians of their control over the Senate By this arrangement the government was placed under the concurrent and joint voice of the two orders expressed through separate and appropriate organs—the one possessing the positive, and the other the negative powers of the government This simple change converted it from an absolute into a constitutional government—from a government of the patricians only to that of the whole Roman people and from an aristocracy into a republic. In doing this, it laid the solid foundation of Roman liberty and greatness.

A superficial observer would pronounce a government so organized as that one order should have the power of making and executing the laws, and another, or the representatives of another, the unlimited authority of preventing their enactment and execution—if not wholly impracticable, at least too feeble to stand the shocks to which all governments are subject, and would therefore predict its speedy dissolution after a distracted and inglorious career.

How different from the result! Instead of distraction, it proved to be the bond of concord and harmony; instead of weakness, of unequaled strength; and, instead of a short and inglorious career, one of great length and immortal glory. It moderated the conflicts between the orders, harmonized their interests and blended them into one, substituted devotion to country in the place of devotion to particular orders, called forth the united strength and energy of the whole in the hour of danger, raised to power the wise and patriotic, elevated the

Roman name above all others, extended her authority and dominion over the greater part of the then known world and transmitted the influence of her laws and institutions to the present day. Had the opposite counsel prevailed at this critical juncture, had an appeal been made to arms instead of to concession and compromise, Rome, instead of being what she afterward became, would in all probability have been as inglorious and as little known to posterity as the insignificant states which surrounded her, whose names and existence would have been long since consigned to oblivion had they not been preserved in the history of her conquests of them. But for the wise course then adopted, it is not improbable—whichever order might have prevailed—that she would have fallen under some cruel and petty tyrant and finally been conquered by some of the neighboring states or by the Carthaginians or the Gauls. To the fortunate turn which events then took she owed her unbounded sway and imperishable renown.

It is true that the tribunate, after raising her to a height of power and prosperity never before equaled, finally became one of the instruments by which her liberty was overthrown; but it was not until she became exposed to new dangers growing out of increase of wealth and the great extent of her dominions, against which the tribunate furnished no guards. Its original object was the protection of the plebeians against oppression and abuse of power on the part of the patricians. This it thoroughly accomplished, but it had no power to protect the people of the numerous and wealthy conquered countries from being plundered by consuls and proconsuls. Nor could it prevent the plunderers from using the enormous wealth which they extorted from the impoverished and ruined provinces to corrupt and debase the people, nor arrest the formation of parties (irrespective of the old division of patricians and plebeians) having no other object than to obtain the control of the government for the purpose of plunder. Against these formidable evils her constitution furnished no adequate security. Under their baneful influence the possession of the government became the object of the most violent conflicts, not between

patricians and plebeians, but between profligate and corrupt factions. They continued with increasing violence until finally Rome sunk, as must every community under similar circumstances, beneath the strong grasp, the despotic rule of the chieftain of the successful party—the sad but only alternative which remained to prevent universal violence, confusion, and anarchy The Republic had in reality ceased to exist long before the establishment of the Empire. The interval was filled by the rule of ferocious, corrupt, and bloody factions. There was, indeed, a small but patriotic body of eminent individuals who struggled in vain to correct abuses and to restore the government to its primitive character and purity, and who sacrificed their lives in their endeavors to accomplish an object so virtuous and noble. But it can be no disparagement to the tribunate that the great powers conferred on it for wise purposes, and which it had so fully accomplished, should be seized upon during this violent and corrupt erval to overthrow the liberty it had established and so long ished and supported.

In assigning such consequence to the tribunate I must not erlook other important provisions of the constitution of the Roman government. The Senate, as far as we are informed, seems to have been admirably constituted to secure consistency and steadiness of action. The power—when the Republic was exposed to imminent danger—to appoint a dictator vested for a limited period with almost boundless authority, the two consuls and the manner of electing them, the auguries, the sibylline books, the priesthood, and the censorship—all of which appertained to the patricians—were perhaps indispensable to withstand the vast and apparently irregular power of the tribunate, while the possession of such great powers by the patricians made it necessary to give proportionate strength to the only organ through which the plebeians could act on the government with effect. The government was, indeed, powerfully constituted and apparently well proportioned both in its positive and negative organs. It was truly an iron

government. Without the tribunate it proved to be one of the most oppressive and cruel that ever existed, but with it, one of the strongest and best.

[The British Constitution]

The origin and character of the British government are so well known that a very brief sketch, with the object in view, will suffice.

The causes which ultimately molded it into its present form commenced with the Norman Conquest. This introduced the feudal system with its necessary appendages—a hereditary monarchy and nobility, the former in the line of the chief who led the invading army, and the latter in that of his distinguished followers. They became his feudatories. The country—both land and people (the latter as serfs)—was divided between them. Conflicts soon followed between the monarch and the nobles—as must ever be the case under such systems. They were followed, in the progress of events, by efforts on the part both of monarchs and nobles to conciliate the favor of the people. They, in consequence, gradually rose to power. At every step of their ascent they became more important—and were more and more courted—until at length their influence was so sensibly felt that they were summoned to attend the meeting of the parliament by delegates, not, however, as an estate of the realm or constituent member of the body politic. The first summons came from the nobles, and was designed to conciliate their good feelings and secure their cooperation in the war against the king. This was followed by one from him, but his object was simply to have them present at the meeting of parliament in order to be *consulted* by the crown on questions relating to taxes and supplies, not, indeed, to discuss the right to lay the one and to raise the other—for the king claimed the arbitrary authority to do both—but with a view to facilitate their collection and to reconcile them to their imposition.

ereignties in their respective spheres; and, instead of being united socially, their citizens would be politically connected through their respective States. On the contrary, if they have, by ratifying the Constitution, divested themselves of their individuality and sovereignty, and merged themselves into one great community or nation, it is equally clear that the sovereignty would reside in the whole, or what is called the American people; and that allegiance and obedience would be due to them. Nor is it less so that the government of the several States would, in such case, stand to that of the United States in the relation of inferior and subordinate to superior and paramount; and that the individuals of the several States, thus fused, as it were, into one general mass would be united socially and not politically. So great a change of condition would have involved a thorough and radical revolution, both socially and politically—a revolution much more radical, indeed, than that which followed the Declaration of Independence.

They who maintain that the ratification of the Constitution effected so mighty a change are bound to establish it by the most demonstrative proof. The presumption is strongly opposed to it. It has already been shown that the authority of the Convention which formed the Constitution is clearly against it and that the history of its ratification, instead of supplying evidence in its favor, furnishes strong testimony in opposition to it. To these, others may be added, and among them the presumption drawn from the history of these States, in all the stages of their existence down to the time of the ratification of the constitution. In all, they formed separate and, as it respects each other, independent communities, and were ever remarkable for the tenacity with which they adhered to their rights as such. It constituted, during the whole period, one of the most striking traits in their character, as a very brief sketch will show.

During their colonial condition they formed distinct communities, each with its separate charter and government, in no way connected with each other, except as dependent members of a common em[pire]. Their first union am[ong]

selves was in resistance to the encroachments of the parent country on their chartered rights, when they adopted the title of "the United Colonies." Under that name they acted until they declared their independence—always, in their joint councils, voting and acting as separate and distinct communities, and not in the aggregate, as composing one community or nation. They acted in the same character in declaring independence, by which act they passed from their dependent colonial condition into that of free and sovereign States. The Declaration was made by delegates appointed by the several colonies, each for itself and on its own authority. The vote making the Declaration was taken by delegations, each counting one. The Declaration was announced to be unanimous, not because every delegate voted for it, but because the majority of each delegation did; showing clearly that the body itself regarded it as the united act of the several colonies, and not the act of the whole as one community. To leave no doubt on a point so important and in reference to which the several colonies were so tenacious, the Declaration was made in the name and by the authority of the people of the colonies represented in Congress, and that was followed by declaring them to be "free and independent States." The act was, in fact, but a formal and solemn annunciation to the world that the colonies had ceased to be dependent communities and had become free and independent States, without involving any other change in their relations with each other than those necessarily incident to a separation from the parent country. So far were they from supposing or intending that it should have the effect of merging their existence as separate communities into one nation that they had appointed a committee, which was actually sitting while the declaration was under discussion, to prepare a plan of a confederacy of the States, preparatory to entering into their new condition. In fulfillment of their appointment, this committee prepared the draft of the Articles of Confederation and Perpetual Union, which afterward was adopted by the governments of the several States. That it constituted a mere confederacy and union of the States has already been shown. That, in forming and

assenting to it, the States were exceedingly jealous and watchful in delegating power, even to a confederacy; that they granted the powers delegated most reluctantly and sparingly; that several of them long stood out, under all the pressure of the Revolutionary War, before they acceded to it; and that, during the interval which elapsed between its adoption and that of the present Constitution they evinced, under the most urgent necessity, the same reluctance and jealousy in delegating power—are facts which cannot be disputed.

To this may be added another circumstance of no little weight, drawn from the preliminary steps taken for the ratification of the constitution. The plan was laid, by the Convention, before the Congress of the Confederacy, for its consideration and action, as has been stated It was the sole organ and representative of these States in their confederated character. By submitting it, the Convention recognized and acknowledged its authority over it as the organ of distinct, independent, and sovereign States It had the right to dispose of it as it pleased, and, if it had thought proper, it might have defeated the plan by simply omitting to act on it. But it thought proper to act and to adopt the course recommended by the Convention, which was to submit it—"to a convention of delegates, chosen in each State, by the people thereof, for their assent and adoption" All this was in strict accord with the federal character of the Constitution, but wholly repugnant to the idea of its being national. It received the assent of the States in all the possible modes in which it could be obtained. first, in their confederated character, through its only appropriate organ, the Congress; next, in their individual character, as separate States, through their respective State governments to which the Congress referred it; and finally, in their high character of independent and sovereign communities, through a convention of the people called in each State, by the authority of its government. The States acting in these various capacities might, at every stage, have defeated it or not, at their option, by giving or withholding their consent.

With this weight of presumptive evidence, to use no

expression, in favor of its federal, in contradistinction to its national character, I shall next proceed to show that the ratification of the Constitution, instead of furnishing proof against, contains additional and conclusive evidence in its favor.

We are not left to conjecture as to what was meant by the ratification of the Constitution, or its effects The expressions used by the conventions of the States in ratifying it and those used by the Constitution in connection with it afford ample means of ascertaining with accuracy both its meaning and effect. The usual form of expression used by the former is: "We, the delegates of the State (naming the State) do, in behalf of the people of the State, assent to and ratify the said Constitution." All use "ratify," and all except North Carolina use "assent to" The delegates of that State use "adopt" instead of "assent to"—a variance merely in the form of expression, without in any degree affecting the meaning. Ratification was, then, the act of the several States in their separate capacity. It was performed by delegates appointed expressly for the purpose. Each appointed its own delegates; and the delegates of each acted in the name of and for the State appointing them Their act consisted in "assenting to" or, what is the same thing, "adopting and ratifying" the Constitution.

By turning to the Seventh Article of the Constitution and to the Preamble, it will be found what was the effect of ratifying. The Article expressly provides that, "the ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." The Preamble of the Constitution is in the following words:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America

The effect, then, of its ratification was, to ordain and establish the Constitution and *thereby to make what was before but a plan*—"The Constitution of the United States of America." All this is clear.

It remains now to show *by whom* it was ordained and established, *for whom* it was ordained and established, *for what* it was ordained and established, and *over whom* it was ordained and established. These will be considered in the order in which they stand.

Nothing more is necessary, in order to show by whom it was ordained and established, than to ascertain who are meant by "*We, the people of the United States*"; for, by their authority, it was done. To this there can be but one answer: it meant the people who ratified the instrument, for it was the act of ratification which ordained and established it. Who they were admits of no doubt. The process preparatory to ratification and the acts by which it was done prove, beyond the possibility of a doubt, that it was ratified by the several States, through conventions of delegates chosen in each State by the people thereof and acting, each in the name and by the authority of its State, and, as all the States ratified it, "We, the people of the United States," mean. We, the people of the several States of the Union. The inference is irresistible. And when it is considered that the States of the Union were then members of the Confederacy and that, by the express provision of one of its articles, "each State retains its sovereignty, freedom, and independence," the proof is demonstrative that "We, the people of the United States of America," mean the people of the several States of the Union, acting as free, independent, and sovereign States This strikingly confirms what has been already stated, to wit, that the Convention which formed the Constitution meant the same thing by the terms "United States" and "federal," when applied to the Constitution or government; and that the former, when used politically, always mean these States united as independent and sovereign communities.

been silent, would have led with equal certainty to the same conclusion. For it was the several States, or, what is the same thing, their people, in their sovereign capacity, who ordained and established the Constitution. But the authority which ordains and establishes is higher than that which is ordained and established; and of course the latter must be subordinate to the former and cannot, therefore, be *over* it. "Between" always means more than "over" and implies in this case that the authority which ordained and established the Constitution was the joint and united authority of the States ratifying it; and that, among the effects of their ratification, it became a contract between them and, *as a compact*, binding on them—but only as such In that sense the term "between" is appropriately applied In no other can it be. It was doubtless used in that sense in this instance; but the question still remains *over whom* was it ordained and established? After what has been stated, the answer may be readily given. It was *over the government* which is created, and all its functionaries in their official character, and the individuals composing and inhabiting the several States, as far as they might come within the sphere of the powers delegated to the United States.

I have now shown conclusively, by arguments drawn from the act of ratification and the Constitution itself, that the several States of the Union, acting in their confederated character, ordained and established the Constitution; that they ordained and established it for themselves, in the same character; that they ordained and established it for their welfare and safety, in the like character; that they established it as a compact *between* them, and not as a constitution *over* them; and that, as a compact, they are parties to it, in the same character. I have thus established, conclusively, that these States, in ratifying the Constitution, did not lose the confederated character which they possessed when they ratified it, as well as in all the preceding stages of their existence; but, on the contrary, retained it to the full.

[A PLURAL EXECUTIVE PROPOSED][3]

In the meantime the spirit of fanaticism, which had been long lying dormant, was roused into action by the course of the government, as has been explained. It aims, openly and directly, at destroying the existing relations between the races in the southern section, on which depend its peace, prosperity, and safety. To effect this, exclusion from the territories is an important step; and hence the union between the abolitionists and the advocates of exclusion, to effect objects so intimately connected.

All this has brought about a state of things hostile to the continuance of the Union and the duration of the government. Alienation is succeeding to attachment, and hostile feelings to alienation; and these, in turn, will be followed by revolution or a disruption of the Union, unless timely prevented. But this cannot be done by restoring the government to its federal character, however necessary that may be as a first step. What has been done cannot be undone. . . equilibrium between the two sections has been perma-..ly destroyed by the measures above stated. The northern section, in consequence, will ever concentrate within itself the two majorities of which the government is composed; and should the southern be excluded from all territories now acquired, or to be hereafter acquired, it will soon have so decided a preponderance in the government and the Union as to be able to mold the Constitution to its pleasure. Against this, the restoration of the federal character of the government can furnish no remedy. So long as it continues, there can be no safety for the weaker section. It places in the hands of the stronger and hostile section the power to crush her and her institutions, and leaves her no alternative but to resist or sink down into a colonial condition. This must be the consequence, if some effectual and appropriate remedy be not applied.

[3] Crallé, *op. cit.*

The nature of the disease is such that nothing can reach it, short of some organic change—a change which shall so modify the Constitution as to give to the weaker section, in some one form or another, a negative on the action of the government. Nothing short of this can protect the weaker, and restore harmony and tranquillity to the Union, by arresting effectually the tendency of the dominant and stronger section to oppress the weaker. When the Constitution was formed, the impression was strong that the tendency to conflict would be between the larger and smaller States, and effectual provisions were accordingly made to guard against it. But experience has proved this to have been a mistake; and that, instead of being as was then supposed, the conflict is between the two great sections, which are so strongly distinguished by their institutions, geographical character, productions and pursuits. Had this been then as clearly perceived as it now is, the same jealousy which so vigilantly watched and guarded against the danger of the larger States oppressing the smaller would have taken equal precaution to guard against the same danger between the two sections. It is for us who see and feel it to do what the framers of the Constitution would have done had they possessed the knowledge in this respect which experience has given to us, that is, provide against the dangers which the system has practically developed; and which, had they been foreseen at the time and left without guard, would undoubtedly have prevented the States, forming the southern section of the Confederacy, from ever agreeing to the Constitution; and which, under like circumstances, were they now out of, would prevent them from entering into the Union

How the Constitution could best be modified, so as to effect the object, can only be authoritatively determined by the amending power. It may be done in various ways. Among others, it might be effected through a reorganization of the executive department; so that its powers, instead of being vested, as they now are, in a single officer, should be vested in two; to be so elected as that the two should be constituted the special organs and representatives of the respect

tions in the executive department of the government, and requiring each to approve all the acts of Congress before they shall become laws. One might be charged with the administration of matters connected with the foreign relations of the country, and the other of such as were connected with its domestic institutions, the selection to be decided by lot. It would thus effect, more simply, what was intended by the original provisions of the Constitution, in giving to one of the majorities composing the government a decided preponderance in the Electoral College, and to the other majority a still more decided influence in the eventual choice in case the College failed to elect a President. It was intended to effect an equilibrium between the larger and smaller States in this department, but which, in practice, has entirely failed and, by its failure, done much to disturb the whole system and to bring about the present dangerous state of things.

Indeed, it may be doubted whether the framers of the Constitution did not commit a great mistake in constituting a single instead of a plural executive. Nay, it may even be doubted whether a single chief magistrate—invested with all the power properly appertaining to the executive department of the government, as is the President—is compatible with the permanence of a popular government, especially in a lthy and populous community, with a large revenue and a numerous body of officers and employees. Certain it is that there is no instance of a popular government so constituted which has long endured. Even ours, thus far, furnishes no evidence in its favor, and not a little against it; for to it the present disturbed and dangerous state of things, which threatens the country with monarchy or disunion, may be justly attributed. On the other hand, the two most distinguished constitutional governments of antiquity, both in respect to permanence and power, had a dual executive. I refer to those of Sparta and of Rome. The former had two hereditary, and the latter two elective chief magistrates. It is true that England, from which ours, in this respect, is copied, has a single hereditary head of the executive depart-

ment of her government; but it is not less true that she has had many and arduous struggles to prevent her chief magistrate from becoming absolute, and that, to guard against it effectually, she was finally compelled to divest him substantially of the power of administering the government by transferring it, practically, to a cabinet of responsible ministers, who, by established custom, cannot hold office unless supported by a majority of the two houses of Parliament. She has thus avoided the danger of the chief magistrate becoming absolute and contrived to unite, substantially, a single with a plural executive, in constituting that department of her government. We have no such guard, and can have none such without an entire change in the character of our government, and her example, of course, furnishes no evidence in favor of a single chief magistrate in a popular form of government like ours —while the example of *former times*, and our own thus far, furnish strong evidence against it.

But it is objected that a plural executive necessarily leads to intrigue and discord among its members, and that it is inconsistent with prompt and efficient action. This may be true when they are all elected by the same constituency and may be a good reason, where this is the case, for preferring a single executive, with all its objections, to a plural executive. But the case is very different where they are elected by different constituencies having conflicting and hostile interests, as would be the fact in the case under consideration. Here the two would have to act concurringly in approving the acts of Congress and separately in the sphere of their respective departments. The effect, in the latter case, would be to retain all the advantages of a single executive, as far as the administration of the laws were concerned; and, in the former, to insure harmony and concord between the two sections and, through them, in the government. For as no act of Congress could become a law without the assent of the chief magistrates representing both sections, each, in the elections, would choose the candidate who, in addition to being faithful to its interests, would best command the esteem and confidence of